

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

75-1391
BSS

United States Court of Appeals
For the Second Circuit

75-1391

UNITED STATES OF AMERICA,

Appellee,

v.

LIONEL MARQUEZ,

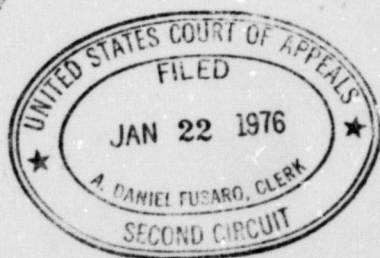
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

APPENDIX FOR DEFENDANT-APPELLANT
LIONEL MARQUEZ

JOSEPH I. STONE
Attorney for Appellant
277 Broadway
New York, New York 10007

THOMAS J. CAHILL, Esq.
United States Attorney
Southern District of New York
1 St. Andrews Plaza
New York, New York 10007



PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT

Docket Number

75-2275

(District Court Judge)

NOTICE OF APPEAL

Notice is hereby given that LINDA MARQUEZ appeals to the United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ order ☐ other (specify) entry of judgment entered in this action on 11/25/75.

(Date)

Joseph F. Stone

(Counsel for Appellant)

Address

Date

To:

THOMAS C. HILL
U.S. ATTORNEY
S.D.N.Y.
NEW YORK, N.Y. 10007

Phone Number

732-3270

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B



QUESTIONNAIRE



TRANSCRIPT ORDER



DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATE).

- ☒ I am ordering a transcript
☐ I am not ordering a transcript

Reason:

- ☐ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

- Prepare transcript of
☐ Pre-trial proceedings
☒ Trial
☐ Sentence
☐ Post-trial proceedings

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ▶ Method of payment ☐ Funds ☐ CJA Form 21

ATTORNEY'S signature

Thomas C. Hill

DATE

11/25/75



COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and forwarded to Court of Appeals.

Date order received

11/25/75

Estimated completion date

12/9/75

Estimated number of pages.

Date

11/25/75

Signature

la

(Court Reporter)

COPY FOR DEFENDANT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

-v-

LIONEL MARQUEZ, a/k/a Chile
Marquez; JAMES RICHARDSON, a/k/a
Jaime; SERGIO PERALTA OYANEDEL,
a/k/a Cholo, a/k/a Cholito;
HECTOR PEREZ; RAFAEL SARMIENTO,
a/k/a Rafa, a/k/a El Manchado,

Defendants.
-----X

:
: INDICTMENT

: 75 Cr.

COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of July, 1972 and continuously thereafter up to December 31, 1972, in the Southern District of New York, JAMES RICHARDSON, a/k/a Jaime; SERGIO PERALTA OYANEDEL, a/k/a Cholo, a/k/a Cholito; HECTOR PEREZ; and RAFAEL SARMIENTO, a/k/a Rafa, a/k/a El Manchado, the defendants, and Lionel Marquez, a/k/a Chile Marquez, named in this count as a co-conspirator but not as a defendant, together with others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about August 22, 1972, in the Southern District of New York, RAFAEL SARMIENTO, a/k/a Rafa, a/k/a El Manchado, drove Lina Ruby Gotes-Contreras from the Prospect Hospital, Bronx, New York, to Charlie's Co-Go Restaurant, at 2080 Eighth Avenue, New York City.

2. On or about August 22, 1972, in the Southern District of New York, in Charlie's Co-Go Restaurant, Lina Ruby Gotes-Contreras spoke with Lionel Marquez, a/k/a Chile Marquez.

3. On or about August 22, 1972, in the Southern District of New York, SERGIO PERALTA OYANEDEL, a/k/a Cholo, a/k/a Cholito, entered apartment 6-D at 20 Sickles Street, New York City, carrying approximately one kilogram of cocaine hydrochloride.

4. On or about August 22, 1972, in the Southern District of New York, RAFAEL SARMIENTO, a/k/a Rafa, a/k/a El Manchado entered apartment 6-D at 20 Sickles Street, New York City.

5. On or about August 22, 1972, in the Southern District of New York, JAMES RICHARDSON, a/k/a Jaime, together with Lionel Marquez, a/k/a Chile Marquez entered apartment 6-D at 20 Sickles Street.

6. On or about August 22, 1972, in the Southern District of New York, JAMES RICHARDSON, a/k/a Jaime, and SERGIO PERALTA OYANEDEL, a/k/a Cholo, a/k/a Cholito, Lionel Marquez, a/k/a Chile Marquez and Lina Ruby Gotes-Contreras had a conversation about drugs at 20 Sickles Street, New York City.

7. On or about August 23, 1972, in the Southern District of New York, Lionel Marquez, a/k/a Chile Marquez, went to apartment 6-D at 20 Sickles Street, New York City.

8. In or about November, 1972, in the Southern District of New York, HECTOR PEREZ, gave Lina Ruby Gotes-Contreras a sample of cocaine.

9. In or about November, 1972, in the Southern District of New York, Lina Ruby Gotes-Contreras gave Lionel Marquez, a/k/a Chile Marquez, the sample of cocaine she had received from HECTOR PEREZ.

10. In or about November, 1972, in the Southern District of New York, HECTOR PEREZ, met with Lina Ruby Gotes-Contreras and Lionel Marquez, a/k/a Chile Marquez, at apartment 5, 1380 Ogden Avenue, Bronx, New York.

11. In or about November, 1972, in the Southern District of New York, on the day following the date on which Overt Act 10 occurred, Lionel Marquez, a/k/a Chile Marquez, gave a sum of money to Lina Ruby Gotes-Contreras.

(Title 21, United States Code, Section 846)

COUNT TWO

The Grand Jury further charges:

On or about the 22nd day of August, 1972, in the Southern District of New York, LIONEL MARQUEZ, a/k/a Chile Marquez; JAMES RICHARDSON, a/k/a Jaime; SERGIO PERALTA OYANEDEL, a/k/a Cholo, a/k/a Chelito; and RAFAEL SARMIENTO, a/k/a Rafa, a/k/a El Manchado, the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

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In or about the month of November, 1972 in the Southern District of New York, LIONEL MARQUEZ, a/k/a Chile Marquez; JAMES RICHARDSON, a/k/a Jaime; and HECTOR PEREZ, the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

FOREMAN

PAUL J. CURRAN
United States Attorney

FD:bj
75-1358
d-634

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

LIONEL MARQUEZ and
SERGIO PERALTA OTANEDEL,

Defendants.

AFFIDAVIT

75 Cr. 715(MEL)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
SOUTHERN DISTRICT OF NEW YORK)

FREDERICK T. DAVIS, being duly sworn, deposes and
says:

1. I am an Assistant United States Attorney in the Southern District of New York, and as such am in charge of the prosecution of the above-captioned case. I am writing this affidavit to summarize the facts underlying the Government's response to motions filed by the defendants in this case claiming that there was undue and deliberate delay by the Government in bringing this indictment.

2. In September, 1974, I was sworn in as an Assistant United States Attorney in the Southern District of New York. In October or early November, I was assigned to assist Bancroft Littlefield, Jr., another Assistant United States Attorney, in a trial on Indictment 74 Cr. 1093, which superseded prior Indictment 74 Cr. 576. During the period of preparation for trial, Mr. Littlefield and others involved in the prosecution mentioned to me that a defendant named in the indictment, Lina Gotes, had expressed an interest in cooperating with the Government. To my knowledge, Special Agent Saverio J. Weidl had spoken with Miss Gotes on several occasions and elicited from her several statements concerning the forthcoming trial on indictment 74 Cr. 1093. I was told, however, that at all times Miss Gotes refused to testify in that trial or in any trial because of her fear of

6a

FTD:bj
d-634

retribution. I was present when Miss Gotes pleaded guilty to three counts of the indictment on November 4, 1974, and I escorted her to the office of the United States Marshal on November 18, 1974, when she surrendered to Federal custody. However, at no time prior to January 2, 1975, did I ever personally talk with her.

3. On December 2, 1974, trial commenced on Indictment 74 Cr. 1093 before the Honorable Marvin E. Frankel. The only defendants listed in the indictment on trial at that time were Lionel Marques and Jose Ray-Ferreiro. During the course of that trial, Mr. Littlefield and I considered calling Miss Gotes as a witness, and procured authority from the appropriate officials in Washington to request an order of use immunity pursuant to 18 United States Code, Section 6002. However, because of her continued refusal to testify voluntarily, and our inability to discuss her testimony with her, we decided not to call her.

4. Just prior to the trial, I was told by either Mr. Littlefield or Mr. Weidl that Lina Gotes had mentioned the name of Sergio Castillo as a person who was aware of certain narcotics activities of Lionel Marques. On Saturday November 30, and Sunday December 1, 1974, Mr. Castillo came to the office of the United States Attorney and described to Mr. Weidl and others through an interpreter, the events underlying Count Two of the present indictment, to which he was an eyewitness. This was the first time I had heard of these events. I prepared Mr. Castillo as a possible witness in that trial, to be called in order to show a "similar act" to Mr. Marques; however, partly because of the short time remaining in the trial, we decided not to use his testimony. I have not seen Mr. Castillo since that time, but I am told

that he has been interviewed more times by agent Weidl and has elaborated on the statements he made to me in December, 1974.

5. On December 23, 1974, Miss Gotes was sentenced by Judge Frankel to nine years in prison. Shortly thereafter, I received a message that Miss Gotes wished to speak with Mr. Littlefield. Since Mr. Littlefield was not at that time available, on January 2, 1975 I spoke with Miss Gotes myself through an interpreter. She told me that since she was safely in prison for a substantial period of time and thus immune from threats or reprisals, she now agreed to cooperate "100%" with the government, including testifying at trial. In particular, she agreed to testify in the forthcoming trial against Elba Morales, who had originally been named in Indictment 74 Cr. 576, but who was severed from that indictment and named in a separate superseding Indictment, 74 Cr. 1189. This was the first time that I or, to my knowledge, any member of the government had been told by Miss Gotes that she would agree to testify in any trial.

6. For approximately six weeks in January and February, 1975, I did not speak with Miss Gotes. This was originally because she had been sent down to the Women's Reformatory in Alderson, West Virginia, and later, when she had been brought back to New York on a writ of habeas corpus, she was gravely ill. Beginning in early March, 1975, I worked with her frequently to prepare her testimony in the case against Elba Morales, which commenced on March 25, 1975. During March, to my knowledge, Miss Gotes spoke further with Special Agent Weidl about the events underlying the present case.

7. Following a return of a guilty verdict in the Morales case, on March 27, 1975, I again turned my attention to developing the possibility of a further indictment against Mr. Marquez and the others with whom he was dealing in 1972, and the case was formally assigned to me in April, 1975. During April and May, 1975, Mr. Weidl and I located and interviewed the other potential and prospective witnesses in this trial. In particular, in late May, 1975, Mr. Weidl located a woman named Liliana Rodriguez, whom he brought to my office on June 3, 1975. The Government expects Miss Rodriguez to provide testimony concerning the source of the cocaine mentioned in Count Two of the present indictment. After talking with Miss Rodriguez, I for the first time tentatively decided that the Government had a sufficient amount of evidence that would merit proceeding to an indictment. Also in May and early June, 1975, Agent Weidl and I procured corroborative documents and other evidence that the Government expects to introduce at trial. After short delays caused by my being in court on several trials and by a vacation, several witnesses appeared in the Grand Jury in early July, 1975, and on July 19, 1975, the present indictment was filed.

8. On July 24, 1975, I interviewed Mr. Peralta in my office and in response to one question, among others, from me, he said that his birth-date was December 8, 1948. This was the first time that I or, to my knowledge, any participant in this investigation was aware of Mr. Peralta's age.

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9. At no time did I or, to my knowledge, any employee of the Government participating in this investigation in any way deliberately delay the investigation of this case or the presentation of the case to the grand jury. Whatever delay occurred between November, 1974, when the events underlying this indictment were first known to the Government in partial form, and the filing of the indictment in July, 1975, was caused primarily by my insistence that a thorough investigation be conducted and that the case not be brought to the grand jury until I was convinced that there was sufficient evidence to assure a conviction. As indicated above, there was, to my mind, absolutely no possibility of a prosecutable case until Miss Gotes announced that she would testify against Mr. Marquez and showed her willingness to do so in the Morales trial, and I was not satisfied with the strength of the Government's case until Agent Weidl located and interviewed Miss Rodriguez in May and June, 1975. Further delay was perhaps caused by my appearing in court as prosecutor in six multi-day trials between January and June, 1975, and by the usual press of business in this busy office. Apart from the concerns discussed in this paragraph, I at all times attempted to bring this case to indictment as soon as possible. In particular, I was worried that witnesses who had agreed to co-operate would decide not to do so or would leave New York. In addition, I was aware that Mr. Marquez was on a period of special parole, resulting from an earlier conviction, that expired in August, 1975; had I been able to do so, I would have preferred bringing Mr. Marquez to trial prior to that time.

10a

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10. Because of the sensitivity of the information contained in this affidavit, the Government requests that it remain sealed until the witnesses mentioned herein have testified at trial. See United States v. Cuomo, 479 F.2d 688, 693-694 (2d Cir. 1973).

Dated: New York, New York

September , 1975

FREDERICK T. DAVIS

Sworn to before me this

day of September, 1975

11a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

LIONEL MARQUEZ, a/k/a Chiles, and
SERGIO PERALTA OYANEDEL,

Defendants.

X

:

: AFFIDAVIT

: 75 Cr. 715 (MEL)

:

X

STATE OF NEW YORK)

COUNTY OF NEW YORK : ss.:

SOUTHERN DISTRICT OF NEW YORK)

SAVERIO J. WEIDL, being duly sworn, deposes and

says:

1. I am a Special Agent of the Drug Enforcement Administration of the United States Department of Justice, and am currently assigned to the office of the New York Drug Enforcement Task Force, 201 Varick Street. Until March 31, 1975 I was assigned to Group 21 of the Drug Enforcement Administration at 555 West 57th Street.

2. During 1974 I participated as an undercover agent and the principal investigative officer in an investigation of various individuals in New York City known to be dealing in cocaine. As part of that investigation, in February, 1974, I was introduced to Lina Gotes in the guise of being a dealer of narcotics, and during the months of February, March and April I had numerous discussions with Miss Gotes in this undercover capacity. In April, 1974, I participated in an undercover capacity in a narcotics transaction in which Miss Gotes' apparent principal contact was Lionel Marquez. On information and belief, as a result of these and

12a

other activities an indictment was filed naming Miss Gotes and Mr. Marquez as defendants, and in July, 1974, these two individuals and others named in the indictment were arrested.

3. Beginning in the end of July or early August, 1974, Miss Gotes made occasional mention to me that she wished to discuss possible co-operation with the Government. In particular, she gave limited statements concerning her drug activities with Mr. Marquez and others during 1973 and 1974, some of which statements were reduced to writing. At this point, and up to the time of trial against Mr. Marquez, however, Miss Gotes told me that under no circumstances would she testify against Mr. Marquez, and that if she were called as a witness she would not testify to the facts that she had related to me.

4. On November 27, 1974, Miss Gotes mentioned to me for the first time that she had done narcotics transactions with Mr. Marquez in 1972, and further told me that during one of those occasions the cocaine had been brought to her apartment by a man she knew as Cholo or Cholito. As to these events as well, however, Miss Gotes insisted that she would not testify against Mr. Marquez. Miss Gotes also mentioned to me that a man named Sergio Castillo was present at one of these transactions, and might be available to testify about it.

5. On November 29, 1974, I located Mr. Castillo in New York City and served a copy of a subpoena supplied to me by Mr. Bancroft Littlefield, Jr., of the United States Attorney's Office, upon his wife, with a direction that Mr. Castillo come to Mr. Littlefield's office the following day.

6. On November 30, 1974 -- a Saturday just prior to the commencement of trial against Mr. Marquez and his co-defendant on the following Monday -- Mr. Castillo appeared at Mr. Littlefield's office in the United States Courthouse. Through the use of an interpreter, Mr. Castillo told me, Special Agent Gerard Carey and Mr. Littlefield his recollection of a transaction that occurred in his apartment in August, 1972, in which Mr. Marquez and a man named "Jaime" purchased cocaine from Rafael Sarmiento and Sergio Peralta, whom he also knew as "Cholo," using Lina Gotes as an intermediary. In addition, Mr. Castillo subsequently selected a known photograph of James Richardson as the man he knew as "Jaime." My notes of his statement were translated by the interpreter into Spanish, and the Spanish version was signed by Mr. Castillo.

7. During the course of that trial, I worked with Assistant United States Attorney Frederick T. Davis to prepare Mr. Castillo as a potential witness, and for that reason Mr. Castillo came to the United States Courthouse several times more. However, I was informed that Mr. Castillo did not testify.

8. In January, 1975, I was informed by Mr. Davis that Lina Gotes had agreed to testify in future trials, and for that reason I attempted to locate information relating to the facts given to me by Miss Gotes and Mr. Castillo concerning transactions in cocaine by Mr. Marquez and his associates in 1972. I first attempted to speak with Miss Gotes, but I was informed by Mr. Davis that she had been sent to West Virginia; later, when she returned to the New York area, I was told by prison officials that she was in

the hospital because of serious health problems. In January, 1975, I did speak with Mr. Castillo, and took several further statements from him concerning the details of his knowledge of Mr. Marquez and his associates. During January and thereafter I also spoke to numerous other possible witnesses and sought other evidence that might be used against Mr. Marquez and the others with whom he dealt in 1972.

9. During March, 1975, I again was able to communicate with Miss Gotes. While the bulk of my discussions with her at that time related to her forthcoming testimony in a trial against Elva Morales, I also interviewed her in further detail about her knowledge of Mr. Marquez' activities in 1972.

10. In late May, 1975, I located Miss Liliana Rodriguez and asked her to come with me to the office of the United States Attorney. In June, 1975, together with Mr. Davis, I questioned her about her knowledge of Rafael Sarmiento and Sergio Peralta, and she gave us information that I believe explained the source of the cocaine that Mr. Marquez bought in the presence of Mr. Castillo and Miss Gotes in August, 1972.

11. On the advice of Mr. Davis, I respectfully request that this affidavit remain sealed because of possible danger to the individuals named herein.

SAVERIO J. WEIDL

Sworn to before me this

day of September , 1975

FTD:RMS
n-841

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-v- :

LIONEL MARQUEZ, a/k/a Chile, and :
SERGIO PERALTA OTAMEDEL, :

Defendants. :

AFFIDAVIT

75 Cr. 715 (MEL)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

RANCROFT LITTLEFIELD, JR., being duly sworn,
deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York. As such, I was during 1974 in charge of the prosecution of Indictment 74 Cr. 576, later superseded by Indictment 74 Cr. 1093. This indictment named Lionel Marquez, a/k/a Chile Marquez, and 17 other defendants. I am writing this affidavit to summarize my present recollection of certain facts concerning that prosecution.

2. Indictment 74 Cr. 576 was filed on June 6, 1974, and was ordered sealed, and bench warrants for all the named defendants were issued. On information and belief, on July 1, 1974, Lina Gotes and Lionel Marquez were both arrested and were both brought to the United States Courthouse for arraignment. I did not, however, participate in the arrest, nor did I interview either of them at that time.

3. Shortly after the arraignment of the above-named defendants, I was told by Saverio J. Weidl, the Special Agent of the Drug Enforcement Administration principally responsible for the investigation in the case, that Ms. Gotes had indicated to him that she was willing to provide information to him but she was afraid to have her lawyer know that she was talking to the Government because if he knew she feared Mr. Marquez would find out as well.

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4. During the course of preparation for trial in that matter, I received intermittent reports from Agent Weidl about conversations with Ms. Gotes, and was shown copies of certain statements made by her to him. At one point, to the best of my recollection shortly before the start of the two week trial which began on December 2, 1974, Agent Weidl told me that Miss Gotes had mentioned to him the name Sergio Castillo as someone who could provide information concerning Lionel Marquez.

5. As the trial approached I was told by Agent Weidl and by Ms. Gotes directly that she was afraid to testify at the trial. In order to protect Ms. Gotes' interests, Rudolph Giuliani, Assistant United States Attorney and Chief of the Narcotics Unit and I arranged a meeting for her with Judge Frankel so that if she so desired, a new lawyer could be appointed to advise her. After this meeting, however she continued to tell us that she was afraid to testify.

6. Because of Ms. Gotes' unwillingness to testify voluntarily, this office obtained immunity authorization for her for use if we determined we should attempt to force her to testify. Finally, in view of her continuing unwillingness to testify, we determined not to use the immunity authorization to force her to testify.

7. To the best of my recollection (and with my recollection refreshed by reviewing the statement prepared by Mr. Castillo described below), on November 30, 1974, Sergio Castillo came to my office in the United States Courthouse, after I had provided Agent Weidl with a subpoena to be served upon him. Mr. Castillo related to Agent Weidl his recollection of a narcotics transaction involving among others, Lionel Marquez, and Lina Gotes that took place in 17a

1972 and a written statement was prepared containing this information. On information and belief, these are the events underlying Count Two of Indictment 75 Cr. 715 (MEL). I considered calling Mr. Castillo as a witness to a "similar act" involving Mr. Marquez, however, for various reasons including the shortness of time, decided not to do so.

8. Since the end of the trial against Mr. Marquez on December 14, 1974, I have not spoken with Mr. Castillo, nor have I spoken with Miss Gotes except for passing conversation in the hallway of the United States Attorney's office and for several moments when I helped Mr. Davis prepare her for testifying in the trial against Elva Morales that began on March 25, 1975.

9. At the request of Mr. Davis, I respectfully request that this affidavit remain sealed.

BANCROFT LITTLEFIELD, JR.
Assistant United States Attorney

Sworn to before me this
day of September, 1975

18a

ENDORSEMENT

UNITED STATES OF AMERICA, v. LIONEL MARQUEZ, Defendant.
75 Cr. 715

LASKER, D.J.

The motion to dismiss the indictment because of the Government's alleged deliberate delay in filing the indictment is denied without prejudice to renewal as indicated below. Marquez makes no factual showing of deliberate delay on the part of the Government. On the other hand, affidavits filed by the Government positively assert that the first witness to supply information to the Government as to the facts underlying the present indictment did so in November or December, 1974, and that there was no intentional delay of the investigation by the Government. Moreover, Marquez has not shown that the date of filing of the indictment caused him actual prejudice. James Richardson whom he asserts would have testified in his favor, died more than a year before any facts in this case were revealed to the Government. The last letter from Ms. Gotes to Marquez' defense counsel in which she exculpated Marquez would not be admissible in evidence unless she testifies and denies such exculpation. Should that prove to be the case, the motion may be renewed.

The motion to dismiss the indictment on the grounds that the present indictment subjects him to double jeopardy because of a prior acquittal is denied. From the face of each indictment it appears that the crimes and facts alleged in the earlier indictment are separate and distinct from the crimes and facts presently alleged.

The motions are denied without prejudice to renewal during or after trial.

It is so ordered.

Dated: New York, New York
October 8, 1975.

MORRIS E. LASKER
U.S.D.J.

10-126
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA :

- v - :

INDICTMENT

3 74 Cr. 1093

LIONEL MARQUES, a/k/a Chilo :
Marques, :
LENA RUDY GOTES-CONTRERAS, :
WILLIAM CHAIN, :
JUAN CARLOS SARMIENTO-DIAZ, :
GUILLERMO SAAVEDRA, a/k/a Chito, :
CARMEN MIRANDA, :
JAIHE LEYTON, :
RAMON VARAS-ROJAS, :
MARCOS AGUIRRE, :
EDUARDO DIAZ, :
LUISA DIAZ, :
JOSE REY-FERREIRO, a/k/a LUIS :
JUAN VALLADARES, :
JOHN DOE DIAZ, a/k/a El Chocosa, :
JOHN DOE, a/k/a One Eyed Fidel, :
JOHN DOE, a/k/a Robin, :

Defendants. :

-----x
COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of July, 1971,
and continuously thereafter up to the 2nd day of July, 1974
in the Southern District of New York and else where, LIONEL
MARQUES, a/k/a Chile Marques, LENA RUDY GOTES-CONTRERAS,
WILLIAM CHAIN, JUAN CARLOS SARMIENTO-DIAZ, GUILLERMO SAAVEDRA,
a/k/a Chito, CARMEN MIRANDA, JAIHE LEYTON, RAMON VARAS-ROJAS,
MARCOS AGUIRRE, EDUARDO DIAZ, LUISA DIAZ, JOSE REY-FERREIRO, a/k/a
Luis, JUAN VALLADARES, JOHN DOE DIAZ, a/k/a El Chocosa, JOHN DOE,
a/k/a One Eyed Fidel and JOHN DOE, a/k/a Robin, the defendants,
and Vladimir Ianderas and Nicodemus Olate named as co-con-
spirators, and others to the Grand Jury known and unknown, unlaw-
fully, intentionally and knowingly combined, conspired, confeder-
ated and agreed together and with each other to violate Sections

812, 841(a)(1), 841(b)(1)(A), 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants and co-conspirator unlawfully, intentionally and knowingly would import into the United States from places outside thereof large quantities of cocaine, a Schedule II narcotic drug controlled substance, the exact amount thereof being unknown, in violation of Sections 812, 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

3. It was further part of said conspiracy that the said defendants and co-conspirator unlawfully, intentionally and knowingly would distribute and possess with intent to distribute large quantities of cocaine, a Schedule II narcotic drug controlled substance, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

THE DEFENDANTS*

The Sources of Supply in Chile

4. Defendants JOHN DOE DIAZ, a/k/a El Chocosa, JOHN DOE, a/k/a One Eyed Fidel, and JUAN VALLADARES were suppliers of cocaine in and around the city of Valparaiso, Chile.

The Financiers in Chile

5. Defendants WILLIAM CHAIN and JUAN CARLOS SARMIENTO-DIAZ lived in and around Valparaiso, Chile and defendants GUILLERMO SAAVEDRA, a/k/a Chito and MARCOS AGUIRRE lived in Santiago, Chile. All were able to obtain narcotics and organize and finance narcotics smuggling operations into the United States.

6. Defendant CARMEN MIRANDA lived in Santiago, Chile and had contacts in the United States for the purchase of narcotic drugs.

* The descriptions herein relate to the period of the Indictment.

The Smugglers in Chile

7. Defendant JAIME LEYTON was a Chilean Naval Officer stationed in Valparaíso, Chile with access to diplomatic pouches transported between Valparaíso and Santiago, Chile and to Washington, D.C.

8. Defendant RAMON VARAS-ROJAS was a serjeant or other member of the Chilean Air Force at Los Cerrillos, the military airport in Santiago, Chile who had access to military flights between Chile and the United States.

The Receivers in Washington, D.C.

9. Defendant EDUARDO DIAZ was a Chilean Naval Attache stationed in Washington, D.C. who had access to Chilean diplomatic pouches sent between Chile and Washington, D.C. Defendant LUISA DIAZ was the wife of EDUARDO DIAZ and assisted EDUARDO DIAZ in the delivery of the cocaine and in the smuggling of large sums of money from the United States to Chile.

The Buyers in New York

10. Defendant LENA RUBY GOTES-CONTRERAS lived in New York and travelled to Washington, D.C. to receive the narcotics after it had been smuggled into the United States.

11. Defendant LIONEL MARQUES, a/k/a Chile Marques, lived in New York and was the major purchaser and reseller in New York of the cocaine smuggled from Chile to Washington, D.C. and delivered to defendant LENA RUBY GOTES-CONTRERAS.

12. Defendant JOSE REY-FERREIRO, a/k/a Luis assisted defendant LIONEL MARQUES in purchasing the cocaine and negotiated to purchase the cocaine after it had been brought into the United States from Chile.

OVERT ACTS

In pursuance of this conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

(1) In or about May through July 1973 defendants WILLIAM CHAIN, JUAN CARLOS SARMIENTO DIAZ and co-conspirator Wladimir Banderas arranged to smuggle approximately twelve kilograms of cocaine to the United States from Chile in separate shipments of approximately four kilograms each.

(2) In or about May through July, 1973 defendant JAIME LEYTON arranged to smuggle cocaine concealed in diplomatic pouches to defendant EDUARDO DIAZ in Washington D.C.

(3) In or about May through July, 1973 defendant LENA RUBY GOTES-CONTRERAS received cocaine in Washington, D.C. and defendant LIONEL MARQUES, a/k/a Chile Marques purchased the cocaine in New York.

(4) In or about July and August, 1973, defendant GUILLERMO SAAVEDRA, a/k/a Chito, and co-conspirator Wladimir Banderas arranged to smuggle ten kilograms of cocaine into the United States from Chile.

(5) In or about August and September, 1973, defendant RAMON VARAS-ROJAS smuggled ten kilograms of cocaine into the United States secreted on a Chilean Military aircraft.

(6) In or about September and October, 1973, defendant LENA RUBY GOTES-CONTRERAS received ten kilograms of cocaine in Washington, D.C., and LIONEL MARQUES, a/k/a Chile Marques purchased ten kilograms of cocaine in New York.

(7) On or about February 5 and 6, 1974, defendant LENA RUBY GOTES-CONTRERAS delivered \$10,000 to a man in New York as partial payment for the purchase of four kilograms of cocaine.

(8) On or before February 9, 1974, defendant LENA RUBY GOTES-CONTRERAS sent \$54,000 to defendants EDUARDO DIAZ and LUISA DIAZ in Washington, D.C. as partial payment for four kilograms of cocaine.

(9) On or about February 13, 1974 defendants EDUARDO DIAZ and LUISA DIAZ possessed a shopping bag containing \$52,980.

(10) On or before February 19, 1974 defendant EDUARDO DIAZ arranged to smuggle \$52,230 from the United States to Chile secreted in Salem cigarette packages and carried in a diplomatic pouch.

(11) On or about February 24, 1974, defendant WILLIAM CHAIN received \$52,230 in partial payment for four kilograms of cocaine.

(12) On or about March 28, 1974, defendant GUILLERMO SAAVEDRA, a/k/a Chito, possessed 1400 grams of cocaine which he delivered to a man in Chile.

(13) On or about April 1, 1974, defendant MARCOS AGUIRRE possessed 250 grams of cocaine which he delivered to a man in Chile.

(14) On or about April 15, 1974, defendant LENA RUBY GOTES-CONTRERAS and JOHN DOE, a/k/a Robin, possessed approximately 27.5 grams of cocaine at C and G Cleaners, 1253 St. Nicholas Avenue, New York, New York.

(15) On or about April 16, 1974, defendants LENA RUBY GOTES-CONTRERAS and LIONEL MARQUES, a/k/a Chile Marques, drove in an automobile to meet with a man to arrange to receive a quantity of cocaine.

(16) On or about April 16, 1974, defendant LIONEL MARQUES, a/k/a Chile Marques met with defendants LENA RUBY GOTES-CONTRERAS and JOSE REY-FERREIRO, a/k/a Luis on the Southwest corner of 97th Street and Broadway, New York, New York.

(17) On or about April 16, 1974, defendant JOSE REY-FERREIRO, a/k/a Luis entered a building at 320 West 96th Street, New York, New York.

(18) On or about April 17, 1974, defendants LIONEL MARQUES, a/k/a Chile, and LENA RUY GOTES-CONTRERAS drove to C and G Cleaners, 1253 St. Nicholas Avenue, New York, New York.

(19) On or about April 17, 1974, defendant LENA RUBY GOTES-CONTRERAS delivered \$4,600 to a man.

(20) On or about April 18, 1974, defendant JOSE REY-FERREIRO, a/k/a Luis possessed \$28,500 at the Skyline Motor Inn, 10th Avenue and 50th Street, New York, New York.

(21) On or about April 19, 1974 defendant JOSE REY-FERREIRO, a/k/a Luis met with a man and negotiated to purchase three pounds of cocaine.

(22) On or about April 22, 1974, defendant LENA RUBY GOTES-CONTRERAS delivered \$700 to a man.

(Title 21, United States Code, Sections 846 and 953.)

COUNT TWO

The Grand Jury further charges:

In or about May, 1973, in the Southern District of New York, CARLOS SARNIENTO, WILLIAM CHAIN, CARMEN MIRANDA, JAIME LEYTON, EDUARDO DIAZ, LUISA DIAZ, LENA RUBY GOTES-CONTRERAS and LIONEL MARQUES, a/k/a Chile Marques, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately four kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

In or about August and September, 1973 in the Southern District of New York, GUILLERMO SAAVEDRA, RAMON VARAS-ROJAS, CARMEN MIRANDA, LENA RUBY GOTES-CONTRERAS, and LIONEL MARQUES, a/k/a Chile Marques, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately ten kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

On or about the 16th day of April, 1974, in the Southern District of New York, LIONEL MARQUES, a/k/a Chile Marques, LENA RUBY GOTES-CONTRERAS, JOSE REY-PERREIRO, a/k/a Luis, GUILLERMO SAAVEDRA and MARCOS AGUIRRE, the

defendants, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II controlled substance, to wit, approximately 235 grams of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

FOREMAN

PAUL J. CURRAN
United States Attorney

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

JUDGE LASKER 75 CRIM 715

D. C. Form No. 100 Rev.

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U. S.:
vs.		Frederick T. Davis, At
1. LIONEL MARQUEZ, a/k/a Chile Marquez-1-3		791-1926
2. JAMES RICHARDSON, a/k/a Jaime-1-3		
3. SERGIO PERALTA OYANEDEL, a/k/a Cholo, a/k/a Cholito-1&2		
4. HECTOR PEREZ-1&3		
5. RAFAEL SARMIENTO, a/k/a Rafa, a/k/a El Manchado-1&2		
		For Defendant:

(07) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.
J.S. 2 mailed	Clerk			
J.S. 3 mailed 2/1 (425 CLST)	Marshal			
Violation	Docket fee			
Title 21				
Sec. 846, 812, 841(a)(1), (b).				
Consp. to viol. Fed. Narco. Laws. (Ct. 1)				
Distr. & possess. w/ intent to distr.				
Cocaine, II. (Cts. 2&3)				
(Three Counts)				

DATE	PROCEEDINGS
7-18-75	Filed indictment and ordered sealed. B/W ordered. B/W issued. Con
7-23-75	Indictment ordered unsealed. Conner, J. Deft. Marquez (atty. present) Pleads not guilty. Motions returnable 10 days. Bail fixed at \$40,000. P.R.B. secured by \$600. cash (\$575. Savings Bonds-bank books in the amount of \$1,878.32 and \$806.99. to be co-signed by Lisa Rosario and Lionel Marquez. Savings Bonds pass books in custody of the U.S. Atty. Mr. Davis. Deft. ordered graphed and fingerprinted. Case assigned to Judge Lasker for all Conner, J.
7-23-75	LIONEL MARQUEZ= Filed Deft's P.R. Bond with security, in the sum of \$40,000, secured by \$600. Cash, \$575. savings bonds, bank books in the amount of \$1,87
-23-75	LIONEL MARQUEZ= Filed Deft's Appearance Bond for the sum of \$600., secured by \$600. —CLERK —Receipt #55212.
-13-75	LIONEL MARQUEZ= Filed REMAND issued 7-23-75.

DATE	PROCEEDINGS
8-13-75	LIONEL MARQUEZ= Filed Warrant of Arrest with Marshal's return -executed on 7-22-75.
9-3-75	SERGIO PERALTA OYANEDEL= Filed Def't's Notice of Motion to Dismiss the Indictment pursuant to Rule 12 of the F.R.Cr.P.
9-3-75	SERGIO PERALTA OYANEDEL= Filed Def't's Points and Authorities.
9-3-75	SERGIO PERALTA OYANEDEL= Filed Appearance Bond in the sum of \$10,000. Cash - Acknowledg by the Clerk. Name of Surety-Romana Ortiz & Carmen Castro - Receipt #57158.
9-4-75	JAMES RICHARDSON= Entered and filed NOLLE PROSEQUI - Granted--LASKER, J.
9-9-75	LIONEL MARQUEZ= Filed Def't's Affdvt & Notice of Motion to Dismiss the Indictment and others as so indicated.
9-11-75	SERGIO PERALTA OYANEDEL= Mailed original CJA Copy #1 to the A.O., Wash, D.C. for payment--LASKER, J.
9-11-75	SERGIO PERALTA OYANEDEL= Filed CJA appointment of Interpreter, Juli Savres, 240 West End Ave, N.Y.C. 10023, Apt.8C.
9-17-75	LIONEL MARQUEZ & SERGIO PERALTA OYANEDEL= Filed Gov't's Memorandum of Law in support of Gov't's motion for reconsideration of an order directing the Gov't to supply a list of witnesses to the Defense.
9-19-75	SERGIO PERALTA OYANEDEL= Filed REMAND issued 9-3-75.
9-18-75	Filed transcript of record of proceedings, dated <i>July 23, 1975 of Marquez</i>
9-24-75	Filed Gov't's Memo of Law in opposition to Pre-Trial Motions of the Def'ts.
9-24-75	Filed Suppl. to the Gov't's Memo of Law.
10-9-75	SERGIO PERALTA OYANEDEL= Filed MEMO ENDORSEMENT on Def'ts Notice of Motion to dismiss the Indictment filed 9-3-75. Motion DENIED for reasons and on conditions specified on the record this date. IT IS SO ORDERED--LASKER, J. (m/n) Ret'd to Judge 10-10-75
10-9-75	LIONEL MARQUEZ= Filed MEMO ENDORSEMENT on Def't's affdvt & Notice of Motion to dismiss the Indictment filed 9-9-75. The Motions are DENIED without prejudice to renewal during or after trial. IT IS SO ORDERED--LASKER, J. (m/n) Ret'd to Judge 10-10-75
10-9-75	SERGIO P. OYANEDEL= Filed affdvt of Frederick T. Davis, A.U.S.A, in support of a Writ. Writ issued - Ret: 10-20-75.
10-15-75	LIONEL MARQUEZ= Filed Gov't second offender Information. (T. Judge 10-16)
10-20-75	Trial Begun - Def'ts LIONEL MARQUEZ present (Atty Joseph Stone present) Def't. SERGIO Peralta OYANEDEL present. Jury selected - Trial began.
10-21-75	Trial Cont'd.
10-22-75	Trial Cont'd.
10-23-75	Trial Cont'd.
10-24-75	Trial Cont'd.
10-27-75	Trial Cont'd and Concluded.

(Cont'd on Page #3)

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	D Jr
10-27-75 (Cont'd)	Deft. MARQUEZ, GUILTY on COUNT #2, Not GUILTY on COUNT #3. Count #1 DISMISSED. Deft. SERIGO PERALTA OYANEDEL GUILTY on COUNT #2. count #1 DISMISSED. Deft. MARQUEZ to post an additional \$25,000. Surety Bond by Wednesday. Deft. SERIGO PERALTA Oyanedel "Remanded". Sentences for both Deft's on December 12, 1975. —LASKER, J.	
10-29-75	LIONEL MARQUEZ— U.S. Atty "Davis" and Deft's Atty "Stone" present. Deft. is the surrender Monday, November 3, 1975 by 1:30PM —LASKER, J.	
10-29-75	HECTOR PEREZ) RAFAEL SARMIENTO) Closed statistically because (X) defendant's) page () co-defendant) () witness) fugitive's In all other respects this case is still pending.	
11-5-75	LIONEL MARQUEZ— Filed Govt's Memorandum of Law on the issue of sentencing of Deft.	
11-5-75	SERGIO OYANEDEL— Mailed original CJA Copy #1 to the A.O., Wash. DC for Payment— LASKER, J.	
11-5-75	SERGIO OYANEDEL— Filed CJA authorization of an Interpreter per Atty, Frederick H. Cohn, 299 B'way, NYC 10007 —LASKER, J.	
11-5-75	SERGIO OYANEDEL— Mailed original CJA Copy #1 to the A.O., Wash. DC for payment— LASKER, J.	
11-5-75	SERGIO OYANEDEL— Filed CJA authorization for Interpreter, Julie Sayras, 2140 West End Ave, NYC NY 10023	
11-17-75	LIONEL MARQUEZ— Filed Deft's Affdvt & Notice of Motion to set aside the conviction as being contrary to the weight of the evidence, and other aspects as so indicated.	
11-25-75	LIONEL MARQUEZ— Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS subject to Title 18, U.S. Code Section 4208(a)(2) and upon expiration thereof the deft. shall be placed on SPECIAL PAROLE for a period of SIX (6) YEARS. (Count 2) pursuant to Title 21, U.S.C. Section 841.....Lasker, J. Issued commitment 12-2-75.	
11-25-75	LIONEL MARQUEZ— Filed deft's. notice of appeal from the judgment of conviction entered on 11-25-75. Mailed copies to Joseph I. Stone, 277 B'way, N.Y.C. 10007 and U.S. Attorney's Office.	
12-3-75	Filed transcript of record of proceedings dated 10-20-75.	

CHARGE OF THE COURT

Judge Lasker

(In open court - jury present)

THE COURT: Sit back in your chairs and relax so that you can pay attention to what I have to tell you, ladies and gentlemen.

The language may be a little formal. I am going to read it because when it comes to matters of law these days we all want to be pretty accurate. But I hope that I can get the instructions across to you in an informal manner.

If I should be too fast or if you do not understand anything I am reading or saying, please just raise your hand and I will either slow down or explain it to you.

THE CLERK: May I have your attention, please. This Court is about to charge a jury. All spectators wishing to leave may do so now. Those electing to stay must stay until the completion of the charge.

Will the marshal please lock the door.

THE COURT: Ladies and gentlemen, now that you have heard the testimony and the arguments of counsel, the time has come to instruct you as to the law governing

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2 this case.

3 You have been sworn as jurors to try the
4 issues presented by the allegations of the indictment and
5 on your determination of the facts, and I stress the words
6 "your determination," to decide under the law, as I
7 instruct you, whether the government has or has not proven
8 the charges in the indictment beyond a reasonable doubt
9 against either Mr. Marquez or Mr. Peralta or both.

10 I will discuss those charges with you in a
11 moment in detail, but before that I wish to give you a
12 few important instructions.

13 First, you are to perform your duties as jurors
14 without bias or prejudice to or for anybody, whether the
15 government or Mr. Marquez or Mr. Peraltz. The law does
16 not permit jurors, and you would not want it to permit
17 jurors, to be governed either by sympathy or swayed by
18 prejudice or public opinion.

19 Mr. Stone was quite right when he said cocaine
20 is not on trial. Mr. Marquez and Mr. Peralta are on
21 trial.

22 Second, we start with the proposition that we
23 started with at the outset of this trial, that is, that
24 the law presumes every defendant, and, of course, Mr.
25 Marquez and Mr. Peralta, to be innocent of any charge

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2 against him.

3 You will recall that when you were selected,
4 I specifically asked each one of you if you could enter
5 into the discharge of your duties presuming Mr. Marquez
6 and Mr. Peralta to be innocent unless proven guilty
7 beyond a reasonable doubt after your own deliberations,
8 and each of you gave me the answer, "Yes."

9 This presumption of innocence is sufficient
10 to acquit Mr. Marquez and Mr. Peralta unless and until,
11 as jurors, you have concluded that the government has
12 proven its case against them beyond a reasonable doubt.
13 The burden or responsibility is on the government to
14 prove Mr. Marquez or Mr. Peralta guilty and to prove
15 every essential element of the crimes that are charged.

16 Third, the existence of an indictment, I
17 remind you, does not constitute evidence against Mr.
18 Marquez or Mr. Peralta, but is merely a method of bringing
19 the charge against them.

20 The indictment in this case contains two counts
21 now, as you know. Each contains a separate crime or
22 charge which I will describe to you later and they must
23 each be considered separately.

24 Now, I have said that the government has assumed
25 the burden of proving Mr. Marquez and Mr. Peralta guilty

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2 beyond a reasonable doubt. Let me describe that important
3 term which I repeated several times at the outset.

4 A reasonable doubt is not a vague, speculative
5 or imaginative doubt. It is a doubt which, as the phrase
6 suggests, is based on reason and which comes either from
7 the evidence that has been put before you or that you
8 have heard and seen, or from the lack of evidence, that
9 you have not heard or seen. It is a doubt which a reason-
10 able man or woman would entertain. It is a doubt -- and
11 I think this is the best definition -- which would cause
12 reasonable men and prudent women like yourselves to
13 hesitate to act in relation to matters of importance
14 in your own private lives.

15 Let us say you have an important decision to
16 make. How do you go about making that decision? You
17 think about everything you know about it, you think about
18 everything you would want to know and have not been told
19 and you say to yourself, "Do I have enough dependable
20 information so that I am ready to act?"

21 If you say, "I do not," then you have a
22 reasonable doubt. If you say, "I do," then you do not.

23 A mere suspicion, of course, is not sufficient
24 to justify a conviction. Suspicion is not a substitute
25 for evidence, nor is it sufficient to convict if you find

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2 that the circumstances merely render the guilt of an
3 accused to be probable. The law does not deal in
4 probabilities.

5 Since the burden or responsibility is on the
6 government to prove Mr. Marquez and Mr. Peralta guilty,
7 they have the right to rely on the failure of the govern-
8 ment to do so and they may also of course, as in this case,
9 rely upon evidence brought out on cross examination of
10 government witnesses and the testimony of their own
11 witnesses.

12 Now, in saying that the government must
13 prove its case beyond a reasonable doubt, if there is to
14 be a conviction, I do not mean to say that the government
15 is required to prove guilt beyond all probable doubt.

16 Indeed, in human affairs it is hard to think
17 of anything that we can prove beyond all possible doubt,
18 with the possible exception of mathematical propositions.
19 But the proof must be of such a convincing character that
20 you would be willing to rely and act on it if it were
21 among the most important decisions of your own private
22 affairs.

23 The evidence in this case, ladies and gentlemen,
24 consists of the testimony of the witnesses, the exhibits
25 which have been received in evidence, and facts which

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2 have been stipulated or agreed by counsel.

3 You are obligated to decide the case solely
4 on the evidence, but in your consideration of the evidence
5 you are not limited to the bald statements of the witnesses.
6 You are entitled to and must think beyond the mere words
7 that were uttered.

8 In deciding the many questions before you,
9 it is your job to determine the credibility or the
10 believability of the witnesses who have testified here
11 and all counsel have made it clear that this case turns
12 on whether you believe those witnesses or not, and how you
13 believe.

14 How do you go about determining whether you
15 believe a witness or not?

16 Perhaps the best answer is to say you deter-
17 mine the truthfulness or accuracy or weight to be given
18 to a witness' testimony in the same way that you would
19 determine such questions in your own personal affairs.

20 We are all constantly called upon from day to
21 day to determine how much confidence we place in the state-
22 ments that people make to us. The truthfulness or depend-
23 ability of a witness, as that of any other person, can
24 be determined and must be determined by his demeanor,
25 that is, his look, his relationship to the case and to the

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1 parties, to the possibility of his being biased or partial
2 or of his not being biased or partial, the stake he may
3 have in the outcome of the case, the reasonableness or
4 unreasonableness of his statements, the strength or
5 weakness of his recollection and the extent to which what
6 he has said has been either corroborated or contradicted
7 by testimony of other witnesses or by exhibits or
8 stipulations.
9

10 Of course, the testimony of a witness may
11 also be impeached by his own prior inconsistent statements,
12 unless there is some explanation for the inconsistency.

13 In ordinary life when you need to determine
14 the truthfulness of a person you ask yourself, don't you,
15 "How did he impress me? Did his version appear straight-
16 forward and candid or did he or she seem to be trying to
17 hide some of the facts? Did he have any motive to
18 testify falsely or no motive of that kind?"

19 The ultimate question for you to decide on
20 in passing on the credibility of a witness is, did he
21 tell the truth before me.

22 It is for you jurors alone to determine the
23 weight to be given to the testimony of a witness and in
24 making these suggestions and some of the suggestions to
25 follow, I am attempting to give you guidelines only and

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not to dictate what your estimate should be of the weight of the testimony.

It is a general rule that if you find that any witness wilfully testified falsely as to any material that is important matter, not some matter which you believe to be insignificant, you may reject the entire testimony of the witness or you may accept such portion of it as you believe and reject the remainder.

Other rules that may be applicable here are as to a witness who has been convicted in the past of a certain crime. You may consider that conviction in determining the witness' credibility. By this I mean you may consider the prior convictions in determining the witness' worthiness of belief. But none of these rules, ladies and gentlemen, are absolute and you may find that a person who has been convicted of a crime may nevertheless, of course, be telling the truth.

Now, a few rules apply particularly in this case. One is with regard to so-called accomplice testimony.

The government, of course, presented accomplice witnesses in this case and in the prosecution of crime a government is often called upon to use witnesses who are accomplices in the commission of the crime itself. This is particularly so in such cases as we have at hand.

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2 It often happens that the only persons who
3 are aware of the commission of the crime are those who
4 were accomplices in the crime itself. However, experience
5 has shown that an accomplice may be motivated to place
6 the blame on others than himself.

7 Accordingly, an accomplice's testimony should
8 be carefully scrutinized and checked with the facts which
9 you find that do exist in the case and against the evidence
10 which may corroborate and then you should give the testi-
11 mony of the accomplice such value or weight as you deem
12 proper under the circumstances.

13 I add in case you have ever acted as a juror
14 in the State Court where the law is different, that the
15 federal law is that an accomplice's testimony by itself
16 may be sufficient to convict if, of course, it convinces
17 you of the defendants' guilt beyond a reasonable doubt.

18 Now, it is also, of course, proper for you to
19 consider the interest which a witness has in the outcome
20 of a case. I do not mean to suggest, however, that a
21 witness who has an interest in the outcome of a case may
22 not be telling the truth in spite of his interest. I
23 merely point out that you may consider that factor in
24 determining what weight to give his testimony.

25 Now, because as you know every defendant is

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2 presumed innocent, it is not necessary that any defendant
3 testify and Mr. Marquez has chosen not to do so and this
4 was his right. The fact that he did not testify is not
5 to be taken by you as any evidence against him whatsoever.
6 Indeed it is to be completely disregarded.

7 I think you will understand the reason for
8 that rule if you consider how you would feel if the
9 government charged you with a crime. You would feel, if
10 you knew yourself or believed yourself to be innocent, that
11 it was not your obligation to prove you were innocent
12 but the government's obligation to prove, as it is the
13 government's obligation to prove that you were guilty
14 beyond a reasonable doubt.

15 Mr. Peralta, of course, did testify in his
16 own defense. When a defendant elects to take the stand,
17 his credibility is to be tested by the same tests as you
18 apply to any other witness. Clearly, however, a defendant
19 does have an interest in the case which you may consider
20 as you would with any other witness in determining his
21 credibility. But you may not disregard Mr. Peralta's
22 testimony simply because he is a defendant.

23 Now, ladies and gentlemen, let me talk for
24 a moment about the difference between circumstantial
25 and direct evidence.

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There are generally speaking two types of evidence or two definitions at least, categories of evidence from which you may properly find the facts. I am sure you have heard them referred to often. One is called direct evidence. That is the evidence of an eyewitness or earwitness. I have heard, such a witness would say, I have seen it.

The other is indirect or more generally called circumstantial evidence. Circumstantial evidence is proof of an event or circumstances which either -- which itself points to the existence or non-existence of facts as to which there was no eyewitness.

The law makes no distinction as to the importance or weight of circumstantial or direct evidence just because it is either one or the other. It requires only that you, the jury, find the facts in accordance with all the evidence, both direct and circumstantial.

I will give you an example of circumstantial evidence which is often used in this courthouse.

If you looked out the window here and see that it is raining, that is direct evidence, of course, that it is raining. On the other hand, if all the blinds were drawn in this courtroom and somebody came through the door over there with a dripping umbrella, that would be

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1 pretty good circumstantial evidence that it was raining
2 outside. You would not have seen it with your own eyes,
3 but you would have the right to infer seeing a man who
4 comes through the door with a dripping umbrella that it
5 was raining outside.
6

7 Now, ladies and gentlemen, both the United
8 States Attorney and defense counsel has from time to
9 time, although not too often in this case, made objections
10 to the introduction of evidence and addressed arguments
11 to the bench.

12 It is the duty of the attorneys on each side
13 of the case to make such objections when the attorney
14 believes that the other side is proposing to put into
15 evidence or ask questions about something that is not
16 properly admissible.

17 I want you to know that when I have sustained
18 an objection to a question or when I have overruled an
19 objection, that does not indicate in any way my attitude
20 with regard to the merits or outcome of the case.

21 What it means and the only thing it means is
22 that when I have sustained an objection, you are to dis-
23 regard the question or when I have told you to disregard
24 certain testimony, you are to disregard it and draw no
25 inference from the wording of the question as to what a

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witness might have answered if I had allowed him to do so.

Now, ladies and gentlemen, that I have instructed you as to the manner in which you should consider the evidence and since you have heard a long summary of the contentions of counsel I will turn to the substance of the charge against Mr. Marquez and Mr. Peralta.

Before I do, let me say that of the two counts, each constitutes a separate crime and that the indictment names five defendants in all but only two of them are on trial before you. The fact that others named in the indictment are not on trial is not to be considered by you.

It is only the evidence as to Mr. Marquez and Mr. Peralta that you are to consider. In the determination of the case, you must bear in mind, of course, that guilt or the determination of whether a man is innocent or guilty is personal. The case against the defendant must be determined separately with respect to him solely on the evidence presented against him or the lack of evidence. The case of each defendant stands or falls on the proof or lack of proof of the charge against him and not against someone else.

Let me now read you Counts 2 and 3 of the

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indictment which are those which remain for you to consider.

Count 2: The grand jury charges: That on or about the 22nd of August, 1972, in the Southern District of New York, Lionel Marquez, also known as Chile Marquez; James Richardson, also known as Jaime; Sergio Peralta Oyanedel, also known as Cholo or Cholito; and Raphael Sarmiento, also known as Rafa or also known as El Manchado, the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine hydrochloride.

Count 3 states: That in or about the month of November, 1972, in the Southern District of New York, Lionel Marquez, also known as Chile Marquez; James Richardson, also known as Jaime; and Hector Perez, the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine hydrochloride.

Thus Count 2 of the indictment charges that Lionel Marquez and Sergio Peralta and others distributed cocaine and possessed it with intent to distribute it on

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2 August 22nd, 1972 while Count 3 charges that Mr. Marquez
3 alone, as far as the defendants in this case are concerned,
4 and others committed that crime in November 1972.

5 The pertinent part of Section 841, the law
6 passed by Congress that is referred to in this indictment
7 reads as follows. I now read to you from the law:

8 "It shall be unlawful for any person knowingly
9 or intentionally to distribute a controlled substance."

10 Section 812 of the law lists controlled sub-
11 stances in various schedules and Schedule II of Section
12 812 lists cocaine as a controlled substance.

13 Ladies and gentlemen, before you can find
14 either Mr. Marquez or Mr. Peralta guilty of either of
15 the charges here, you must be convinced that the government
16 has proven the following three elements and all of them
17 beyond a reasonable doubt as to the particular defendant
18 whose case you are considering.

19 First, that on or about the date alleged in
20 each count the defendant whose case you are considering
21 distributed or possessed with intent to distribute cocaine.

22 Second, that he did so knowingly or intention-
23 ally.

24 And third, that the substance he possessed
25 or distributed was in fact cocaine.

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1 zjw 16
2 The first of the three elements of the offense
3 charged in Count 2 or 3 is distributed or possessing with
4 intent to distribute. Let me explain what these phrases
5 mean.

6 The word distribute is defined in the statute
7 to mean the actual or constructive or attempted transfer
8 of a narcotic.

9 If you find that a defendant did distribute
10 narcotics, you must then consider whether he possessed
11 narcotics -- pardon me, if you find that a defendant did
12 not distribute, actually distribute narcotics, you must
13 then consider whether he possessed narcotics with the
14 intention of distributing.

15 What does that phrase mean? The word possess
16 has a common everyday meaning, that is, to have something
17 within one's control, either physically or as the law
18 puts it, constructively.

19 Physical custody only meets this requirement.
20 I hold this thing. It is in my pocket. It is in my pants,
21 wherever. Possession, however, can also be constructive.
22 When you do not have physical possession of an object,
23 you may have constructive possession of it if you know
24 where it is and can get it any time you want and otherwise
25 can exercise control over it even though you do not

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physically hold it.

The word intent refers to a person's state of mind, of course, so the term possess with intent to distribute can be fairly stated to mean to control an object with the state of mind of transferring it.

You will note that while the indictment charges the defendants with distribution and possession, to convict you need find only that the defendant whose case you are considering either distributed or possessed cocaine with the intention of distributing.

Turning to the second element that the defendant must have done what he did knowingly or intentionally, those words mean that a person who distributes or possesses narcotics with an intent to distribute them must have done so deliberately and purposely, must mean that he knew what he was doing and that his action was not due to carelessness, negligence or mistake.

The third element which must be proven by the government beyond a reasonable doubt is whether the substance that was distributed or was possessed with intent to distribute was in fact a narcotic drug controlled substance or in this case as alleged that it was in fact cocaine.

To make such a finding you are allowed to use

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your common sense to evaluate the evidence before you. Did the material that you have heard described look like cocaine. Was it handled in secrecy or in such a way that those who possessed it showed their consciousness of its illicit nature. Were there any complaints from those to whom the substance was sold? Was money paid for the substance? These are questions that you may consider in reaching your conclusion as to whether the substance was cocaine.

Now, I have discussed with you the necessity for you to determine the intention of the defendants. Knowledge and intent, of course, exist in the mind. Since it is not possible to look physically into a man's mind to see what went on, the only way you have for arriving at a decision in these questions is for you to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and to determine from such facts and circumstances whether the knowledge and intent required by the law were present at the time in question.

Direct proof is unnecessary. In particular, you may find but are not required to find that the mere fact that a defendant possessed a larger quantity of a drug than would normally be used for personal consumption implies

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that he intended to distribute it to someone else.

Now, ladies and gentlemen, there is beyond what I have said one other basis upon which a defendant may be found guilty and I will instruct you about it now.

If you find that a defendant himself did not actually or constructively distribute or possess with intent to distribute cocaine in this case, you may then consider whether he aided and abetted someone else to commit that offense.

Section 2 of Title 18 of the United States Code states that whoever commits an offense against the United States or whoever aids or abets its commission is punishable as a principal.

In other words, a person who aids and abets someone else to commit an offense is just as guilty of that offense as if he had committed it himself. Accordingly, you may find a defendant guilty of the offense charged in the indictment of this case if you find beyond a reasonable doubt that some other person distributed or possessed the cocaine with intent to distribute it and that the defendant in question aided and abetted that person.

To determine whether a defendant aided and abetted the commission of an offense you should ask

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yourself these questions:

Did he associate himself with the venture?
Did he participate in it as something he wished to bring
about? Did he seek by his actions to make it succeed?
If he did, then he is an aider and abettor.

Now, you have heard evidence in this case
tending to show that Mr. Marquez attempted to fabricate
false exculpatory material and that he attempted to keep
certain potential witnesses from testifying against him
although, of course, Mr. Marquez' witness has denied that
he did so.

I charge you that if you believe that Mr.
Marquez did attempt to keep certain potential witnesses
from testifying against him, you may consider that as
circumstantial evidence of guilt consciousness on his part
and grant it independent probative weight.

Ladies and gentlemen, I have now come near the
end of my formal instructions. The most important part
of the case is the part that you will now play as
jurors because it is for you and you alone to decide
whether either Mr. Marquez or Mr. Peralta has been
proven guilty beyond a reasonable doubt of the charges
set forth in this indictment.

I know that you will try the issues that have

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2 been presented to you in accordance with the serious oath
3 that you took as jurors in which you promised that you
4 would well and truly try the issues joined in this case
5 and as you probably remember from my repeating it time
6 after time when I was impaneling this jury, based solely
7 on the evidence which you have had put before you in this
8 courtroom and the instructions which I am now concluding
9 and reach your verdict.

10 I like that phrase "well and truly try the
11 issues joined in this case." It goes back a thousand
12 years and its old fashioned flavor should mean something
13 to you and remind you of the hundreds of thousands of
14 juries who have performed this function before you and
15 remind you that "You must a true verdict render based
16 upon the evidence you heard in this court and the exhibits."

17 In order for you to reach a verdict either of
18 guilty or not guilty as to either defendant your verdict
19 must, of course, be unanimous, that is, everybody must
20 agree on that particular verdict.

21 Incidentally, in that connection I have
22 prepared and will ask the clerk or the marshals to give
23 to the forelady a verdict sheet which simply lists Count
24 2 and the names of the defendants and the possible choices
25 here and Count 3 and the name of the defendant there. And

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2 you can simply put in an X mark when you have reached your
3 verdict and that will assist the forelady in announcing
4 the verdict that has been reached.

5 In spite of the requirement of unanimity,
6 each of you must, of course, decide on each count as to
7 each defendant in question individually and in accordance
8 with your own consciences, but only after deliberation
9 with your fellow jurors to determine whether you believe
10 a just verdict is being reached.

11 You should not hesitate to change your mind
12 if you become convinced that your original view of the
13 case was not in accordance with the facts and the law.

14 On the other hand, you should not change your
15 mind just for the purpose of reaching a verdict as a matter
16 of convenience. I have no reason to believe that this
17 jury would not be able to reach a unanimous verdict one
18 way or the other as to the matters put before it.

19 To sum up, if you find that there was a
20 reasonable doubt that Mr. Marquez or Mr. Peralta violated
21 the law as charged in the indictment against them you
22 should not for any reason hesitate to find a verdict of
23 acquittal as to that count or that defendant, but on the
24 other hand, if you find that the law has been violated
25 as charged by either Mr. Marquez or Mr. Peralta, you

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1 zjw 23

2 should not hesitate because of sympathy or any other
3 reason to render a verdict of guilty on that count as to
4 that defendant.

5 Now, ladies and gentlemen, according to custom,
6 Juror No. 1 will act as foreman of the jury, Mrs. Levy.
7 That does not mean that Mrs. Levy has any authority that
8 the rest of you do not have but just that she will assist
9 in seeing to it that your deliberations will be orderly
10 and that all communications to the Court are properly
11 made.

12 You have the right, as I believe you know,
13 at any time to ask for the exhibits or any one of them.
14 You have the right to have any of the testimony read to
15 you or any of the exhibits submitted to you. You have
16 the right to put any questions that you wish to the
17 Court. If you do wish to have any testimony read back
18 to you or any other exhibit, it would be helpful, Mrs.
19 Levy, if you could be as specific as possible about the
20 material that you are interested in so that we can assist
21 in locating that material and, of course, the way that you
22 get in touch with us is to give a note to the marshal
23 who will be sitting outside the door of the jury room.

24 I am neither encouraging nor discouraging
25 your asking for things but certainly want you to feel free

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to ask for whatever you wish.

Ladies and gentlemen, I have now come to the end of my formal instructions. I will meet briefly with counsel in the robing room for them to tell me whether they believe anything needs clarification and we will come right back so please remain in the jury box.

(In the robing room.)

THE COURT: Mr. Davis, anything from your side?

MR. DAVIS: No, I am satisfied with the charge.

THE COURT: Mr. Stone?

MR. STONE: I am objecting to the aiding and abetting charge. I didn't think it was applicable in this case and I object.

THE COURT: I think it is applicable. Objection overruled.

MR. COHN: Your Honor, I take exception to the language of your accomplice charge and ask that you read the accomplice charge as I submitted it to you.

THE COURT: In what respect do you consider that it differs?

MR. COHN: I believe the language as approved by this circuit says that the testimony of an accomplice

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EXCERPTS FROM TESTIMONY

S E R G I O R A F A E L C A S T I L L O - G O N Z A L E S ,
called as a witness by the Government, being first
duly sworn, testified as follows, through the
interpreter:

DIRECT EXAMINATION BY MR. DAVIS:

(7R) Q Do you remember the day that he came home from
the hospital?

A I don't remember the day exactly but he was in
the hospital for ten or fifteen days.

Q Were you present when he came home from the
hospital?

A I went to pick him up at the hospital with my
wife.

Q When you got back to your house, was anyone
there?

A Lina Gotes.

Q Was anyone else?

A El Cholo, Eliana and Sarmiento.

(11R)

Q Then you say they left and I asked you what
happened next?

A In the afternoon Elva Morales arrived.

Q Who was in the apartment at that time?

A Well, she entered Lina's room and conversed with her.

Q You said earlier that they left.

Had Lina left the apartment?

A No, no.

(23R)

Q Do you remember roughly what time it was that Mr. Marquez came?

A I don't remember the hour exactly. But between nine and ten at night.

Q Had you ever met him before?

A No, never.

Q Did you know his name at that point?

A No, not that either.

Q What happened when he came? Describe exactly what happened.

A Behind him there came another gentleman, a fat bald --

THE COURT: When you say behind, do you mean following him but together or do you mean later on in the evening without him?

THE WITNESS: Yes, following him but together.

THE COURT: What was the name of that man?

THE WITNESS: I don't know his name.

Q How would you describe this person?

A Fat, short, balding.

Q Mr. Castillo, I am putting before you a card
with two photographs on it that has been marked Government's
(24R)
Exhibit 2 for identification.

Do you recognize that?

A Yes.

Q What is it?

A It is the man who accompanied Chile Marquez.

MR. DAVIS: Offer it into evidence.

THE COURT: Do you yet know what his name is?

THE WITNESS: No.

MR. STONE: May I have voir dire, your
Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION BY MR. STONE:

Q Mr. Castillo, when for the first time did you
see this photograph?

A This is the second time.

Q When for the first time did you see it?

A When I came in December.

Q Was this photograph shown to you with a group of other photographs?

A No.
(29R)

DIRECT EXAMINATION BY MR. DAVIS (cont'd.)

Q Was there a door on that room?

A No.

Q Was there anything covering the door?

A A curtain.
(30R)

Q By the way, who had opened the door for them?

A Lina.

Q Lina had opened the door, not you?

A Yes, because I didn't know them.
(34R)

Q You opened it for him.

And what happened?

A He came in quickly because a package was -- he was dropping a package. It fell on the floor, a bag.

Q Did you see where this package fell from?

A From here, the stomach.

Q Indicating his belt?

A Yes, here, his belt.

Q Did you see whether he had one package or more than one?

A There was more. One could see at his belt that he was carrying more.

Q But did you see exactly how many?

A No. Only the one that fell, that's all.

Q How far were you from him when this package fell on the floor?

A About three steps.

Q Was this at the entry to the apartment?

A At the entrance door.

Q Could you describe what this package looked like that fell to the floor?

A Yes.

MR. DAVIS: Indicating, your Honor, about ten inches?

(35R)

THE COURT: Eight to ten inches, yes.

Q Did you see of what material the package was made?

A Plastic.

Q Could you see what was in the package?

A Yes.

Q What was it, what could you see?

A Cocaine.

MR. COHN: Objection.

THE COURT: Sustained.

You can tell us, Mr. Castillo, what the contents of the package looked like but you don't know what it consisted of.

Tell us the color or the --

THE WITNESS: It was a white thing.

Q What kind of material was it, liquid or solid?

A No. Powder. Powder.

Q White powder?

A Yes.

(39R)

Q Was the white plastic bag that Mr. -- well, that the fat man had, was that a transparent one?

A No.

Q Do you know of your own knowledge what was in it when he arrived?

A Well, I suppose --

THE COURT: Don't tell us what you suppose.

Did you ever look in it and see what was in it?

THE WITNESS: No.

Q How big was this white package the fat man had, roughly; could you demonstrate how big it was when he came in?

A Bigger than it was when it arrived.
(41R)

Q Will you repeat again what it was, if anything,
Miss Gotes said to you on that occasion?

A She said to me that Mr. Chile, as she called
him, that he had bought the merchandise.

Q Did she mention any amount of money?

A Yes.

Q What did she say?

A She said for \$13,000.

Q What happened next?

A Sarmiento arrived.

Q When you say Sarmiento, you mean the person
you also knew as El Manchado, whose photograph is
Government's Exhibit 1?

A Yes.

Q What happened?

A He arrived at the apartment and he counted
the money with Lina.

CROSS EXAMINATION BY MR. STONE:
(66R)

Q When they showed you the picture, did they show
you one picture or did they show you a group of pictures?

A A group of pictures.

Q Would you describe to the jury how they showed
you the group of pictures?

A They passed them to me in my hand.

Q Was there any particular picture on the top?

A Yes.

Q Which photo was that?

A Mr. Marquez.

Q Could you see any of the other photos without moving the top photo?

A No.

Q When they showed you the photo, did they mention the name Marquez?

A No.

Q Did you immediately tell them that you recognized that person?

A No.
(74R)

Q Did you ever use narcotics?

A Yes.

Q Did you use cocaine?

A Yes.

Q When did you last use cocaine?

A Over two years ago.

Q Were you using cocaine in August of 1972?

A No.

Q How many times have you used cocaine in your life?

A A few times.

Q Would you tell me when you first used cocaine?

A Here.

Q In this courthouse?

A In my country.

No, in this country.

(75R)

Q Where and when?

A When Lina arrived at my house.

Q Was that in August of 1972?

A Yes.

Q Was this before the meeting that you told us about?

A No, after.

You mean the use of drugs?

Q Yes.

A After.

(77R)

Q Did you remain in your house that day and the next day?

A Yes.

Q The next day did Marquez come back to that apartment?

A I Couldn't say that because I didn't see him.

Q Was your wife in the apartment that day, August 22?

A Yes.
(85R)

Q Prior to the time that Marquez came into that room, did Lina ever mention the word cocaine to you?

A No.

Q When for the first time did Lina mention the word cocaine to you?

A She never said cocaine. She said deal. She said she was going to do a deal.

THE INTERPRETER: Your Honor, we have the same problem here.

THE COURT: I understand. The jury does too.

Q Did you ever see Lina with cocaine prior to that time?

A What time?

Q Prior to that August 22nd transaction.

A Before?

Q Yes.

A No.

Q After it?

A After the deal was done, yes.

(86R) Q Did you ever see her with small amounts of cocaine that she used?

A Oh, yes. She used them in her purse.

Q Did you ever work for an informer or cooperate with any other federal agency?

A No. As far as I can remember, no. I only had the immigration problem.

Q Did you cooperate with the Immigration Service?

A Yes, because they asked me about Mrs. Lilian and Sarmiento.

Q Did they ask you about Lina?

A No.

Q Did you ever tell them anything about Lina?

A No.

(91R)

Q Did Lina ever tell you that the people she was selling narcotics to were Italians?

A Yes.

E L I A N A C A S T I L L O, called as a witness on behalf of the Government, having first been duly sworn, testified as follows through the interpreter:

(145R)
DIRECT EXAMINATION BY MR. DAVIS:

(145R)

Q During the summer of 1972, who, if anyone, was living with you?

A Yes, there was somebody and it was Lina Gotes.

Q Was your husband living with you?

A Oh, yes. My husband and my son.

Q When was your son born?

A The 9th of August, 1972.

Q Do you remember when he came home from the hospital?

A Yes.

Q When was it?
(146R)

A Fifteen days after his birth.
(151R)

Q Did there come a time when this person Elva left?

A Yes.

Q What happened next?

A Afterwards -- well, later on because three or four hours passed, I don't remember the hours exactly.
(155R)

Q I would like you to turn your attention to the following day, Mrs. Castillo. Did you talk with Lina that day?

A Yes.

Q What did she say to you?

A That a man was going to come to leave some money for her which he owed her, I don't know. It was the same man who had been there the night before.

Q And are you talking about this gentleman?

A Yes, about Chile.

Q Did you see that person this following day?

A Yes.

Q What happened?

A He came to leave off some money and he left it off with me because Lina wasn't there.

Q Was anyone else in the apartment at that point?

A Nobody else.

(172R)

Q Were you present when they discussed it with your husband?

A No.

Q When did you last see Lina Gotes?

A A year ago.

L I N A G O T E S, called as a witness on behalf of the Government, first having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DAVIS:

(187R)

Q And what happened?

A Then I said to him, well, I was just been operated on. I can't leave. And then he says to me, that's not a problem. We will help you. I said, okay, that's all right. He tried to carry me out of the hospital. I got dressed and so forth. But then, of course, there were nurses and I was going to leave without permission and then Mr. Sarmiento took me by one arm and I don't

remember which of the other two boys took me by the other arm and they took me out to the street. We got into the car of Mr. Sarmiento's. We went to the apartment where I was renting my room on Sickle Street.

Q Do you remember roughly what time of day this was, Miss Gotes?

A This was about ten o'clock in the morning, more or less. I'm not sure.

Q What happened when you got to the apartment?
(188R)

A We went upstairs. We knocked on the door. Sergio and Eliana opened it for me, Mr. Castillo and his wife.

Q What did you do?

A I went into my room to look for a telephone number.

Q And what happened?

A I didn't find the telephone number, the paper on which I had noted it down.

Q What phone number were you looking for?

A A telephone number which Mr. Marquez had given me.

Q What happened after you failed to find it?

A I said to him that I couldn't find the telephone number but --

THE COURT: You said to whom?

THE WITNESS: To Mr. Sarmiento.

A But I knew the address of where we had to go.

Q And what happened?

A He said to me then, well, let's go there. We went downstairs again. We took the car. We went to the business of Mr. Marquez or where he spends his time.

Q Where was that?

A On 8th Avenue and 13th Street, more or less.
(190R)

Q Did you discuss price with him?

A I don't remember whether it was that time or when he came to my house that we discussed about price.

Q Whenever it was, do you remember what price you discussed?

A I don't remember whether it was \$14,000 or \$16,000 a kilo.
(193R)

Q After Cholito and Mr. Samiento left, as you described, what happened next?

A Sometime later there returned Cholito.

Q And what happened?

A Bringing the cocaine. Sergio -- knocks. Sergio opens the door for him.

Q And what happened?

A And Cholito entered into the hall. He took off his person the two packages of cocaine which he was bringing.

Q And what happened?

A They were those of Mr. Sarmiento.

Q What happened next?

A Sergio or Eliana, I don't remember which of the two, received it from him, put it away for him -- later put it away. After that Cholito goes and Mr. Marquez arrives.

Q How long an interval was there between Cholito's departure and Mr. Marquez' arrival?

A Half or one hour more or less.
(194R)

Q Did he introduce him to you?

A Yes. He introduced us. He introduced the gentleman to the three of us who were there.

Q Had you ever met this gentleman before?

A No.

THE COURT: What was the name of the friend?

THE WITNESS: Jaime Richardson.

(196R)

Q What happened when Mr. Marquez and his friend returned?

A They brought the money which wasn't complete.

Q Was the money counted?

A Yes, Mr. Marquez counted it. Mr. Jaime. I tried to count it, but I couldn't be on my feet for a long time because I had just been operated on. It hurt me too much.

Q Do you remember how much was missing?

A No. I don't remember.

Q What happened?

A And then Sergio set out to finish counting the money. Mr. Marquez agreed to bring later the rest of the money.

Q Did any come in while these gentlemen were in the apartment?

A Yes. Jaime was in the living room in a corner. Mr. Marquez was in the kitchen with Sergio.¹ Somebody knocked at the door. Eliana got up --

THE COURT: Do you mean the front door?

THE WITNESS: Yes, the entrance door.

Q And what happened?

A Eliana says that it's Cholito who is coming back with the other little bit which was going to be sold to Elva.

1zlk
(197R)

Gotes - Direct

197

2 Q And what happened?

3 A Mr. Marquez hides himself behind the cabinet in
4 the kitchen, but Cholito, who had already seen that there
5 was a strange person there, asked to go and drink some water.

6 MR. COHN: Objection and move it be stricken.
7 What Cholito saw.

8 THE COURT: If he said what he saw --

9 MR. COHN: The testimony was, your Honor, that
10 Cholito, who had already seen that there was a strange
11 person there. It is that part that I wish to be stricken.

12 THE COURT: The jury will disregard the testimony
13 that Cholito had already seen something because this witness
14 can't testify what Cholito saw.

15 BY MR. DAVIS:

16 Q What ahppened after Mr. Cholito asked for a glass
17 of water?

18 A He approached -- he entered the kitchen and he
19 drank a cup of water. He said thank you and he left.
20 Later Mr. Marquez was upset because nobody was supposed to
21 see him.

22 MR. STONE: Objection.

23 Q Is that what he said?

24 A He said, his very words I don't remember, but I
25 said to him this --

80a

(201R)

Q Miss Gotes, I'm going to ask you to move on --
did there come a time when Elva and these other people left?

A Yes, but not before Rafa arrived.

Q What happened then?

THE COURT: Are we sticking to people who
are connected --

MR. DAVIS: Rafa Sarmiento is in the
indictment.

THE COURT: I didn't recognize him by that
name.

Q Is Rafa Mr. Sarmiento?

A Yes. Forgive me for not naming him. It's
just I am accustomed to calling him Rafa, but I will
try to name him.

Q And what happened when he came back?

A Mr. Sarmiento arrived. And she, Elva said to
him that the girls wanted us to open the package so that
they could try it and we didn't want to open it for them.
He opened the package for them. They tried it and they
bought a little bit from him, each one.

Q And then what happened?

A After that Mr. Sarmiento gave them a little bit
more as a present.

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(203R)

Gotes - Direct

203

Q Do you remember how much you received?

A I received \$500. Sergio received \$500. Eliana received \$200 and the baby \$100.

Q And what happened?

A Nothing. He left.

Q Turning your attention to the next day, did you see Mr. Marquez the following day?

A Yes.

Q And what happened?

A He came to buy the other little bit which was left over, but Rafa had taken it away, that is to say, Mr. Sarmiento.

Q And what happened?

A Mr. Marquez became upset because it hadn't been kept for him.

Q Do you remember precisely what he said?

MR. STONE: Your Honor, can we get a time and place and who was present in this conversaton?

THE COURT: She said it was the day after the event. Where did this take place?

THE WITNESS: At the apartment of Sergio Castillo where I was living.

Q Do you remember what time of day it was?

A In the afternoon.

82a

(204R)

Q And do you remember precisely what it was Mr. Marquez said to you?

THE COURT: There are a couple of other things.

Was anyone else present besides you and Mr. Marquez?

THE WITNESS: Where?

THE COURT: At the time you are telling us about.

THE WITNESS: At all times Eliana and Sergio were there.

THE COURT: In the same room or in another room?

THE WITNESS: In the same apartment. And sometimes in the same room.

(212R)

Q Have any promises been made to you by the Government with respect to your cooperation?

A Yes. First of all, not to use my testimony against me, all of my statements as long as they are true and complete.

Q Were any other promises made to you?

A Once I testified, to have that brought to the attention of the judge to let him know about it.

Q To which judge?

A When the motion is presented.

Q The motion to read a your sentence?

A Exactly.

Q Now, Miss Gotes, since the time that you were sentenced, have you written any letters to Mr. Marquez?

A Yes, two.

CROSS EXAMINATION BY MR. STONE:

(233R)

Q What did you tell me in that letter?

A That Mr. Marquez had nothing to do with that case.

Q And that was the truth, wasn't it?

A It is what I think.

Q I didn't force you to write the letter to me, did I?

A No, sir.

Q What else did you tell me in that letter?

A That Mr. Marquez had nothing to do with the problem of cocaine. That perhaps this letter would serve
(234R)
the purpose of certifying that he had nothing to do with it.

Q What else did you say?

A I don't remember exactly everything that I said.

Q How long was the letter?

A One sheet.

Q Did you write it in your handwriting?

A Yes, sir.

Q Did you write it in English or did you write it in Spanish?

A In Spanish. I don't write English.

Q Do you remember the date of that letter?

A No, sir.

Q And you are positive it was only one sheet of paper?

A It seems to me that it was one sheet.

Q What else did you tell me?

A With respect to what the letter said, it just said that Marquez had nothing to do with that problem of cocaine.

(249R)

Q Did you ever see Mr. Castillo in possession of any amounts of cocaine?

A The times when he received the packages.

THE COURT: Do you mean from you or from somebody else?

THE WITNESS: Those which Cholito brought which belonged to Mr. Rafael, the ones I told you about which were brought for Mr. Marquez.

Q In 1974 were you in possession of cocaine?

A What do you mean, possession? I don't understand, forgive me.

Q Did you have control of any cocaine in 1974?

A In '74 was when I was arrested.

Q Before you were arrested, did you have in your possession any cocaine?

A I have already told you what I did before. I (250R) don't know what you are referring to. Naturally, I gave a sample to Elva. On another occasion I gave samples to Mr. Marquez.

Q In 1974, you pleaded guilty to an indictment; is that correct?

A Yes, sir.

Q Did you plead guilty to conspiracy to transport cocaine?

A There were three charges which my lawyer selected. One I think was conspiracy. The other ones I don't remember.

Q Did you plead guilty to possessing cocaine?

A It could be. I don't remember. There were three charges.

Q Did you possess cocaine at any time between 1971 and 1974?

THE COURT: 1971?

MR. STONE: July 1971 to July 1974.

MR. DAVIS: I think it is explored now
three or four times, your Honor.

THE COURT: I will allow this final question.

A '71. I think that in '71 I was still in
Alderson, it seems to me, but the times that I had contact
in cocaine deals are the ones that I have told you about
already. I don't remember what dates they were on.
(338R)

Q Were they both standing there?

A Yes.

Q They were both right there in the hall with
Cholito?

A Upon entering, yes, because that is the very
entranceway.

Q That was the day that Mr. Castillo brought
the new baby home, is that right?

A I don't remember whether it was that day but
I don't think so.

Q You don't think so?

A No. It seems to me that it wasn't. I don't
remember very well.

C L A U D I O G A J A R D O - S O T O, called as a
witness, being first duly sworn, testified through
the Spanish interpreter as follows:

DIRECT EXAMINATION BY MR. DAVIS:
(373R)

Q Did you meet anyone else at that point?

A Well, he was accompanied by a lady.

Q Were you introduced to that lady?

A No.

Q Could you describe her?

A She was more or less of my height, black hair.

I didn't see her very well because it was sort of dark.

CROSS EXAMINATION BY MR. STONE:
(393R)

Q When the judge released you, didn't you promise
to show up when you were called?

A I don't know because I don't understand
English and there wasn't an interpreter.

Q You were told to come back on a particular day,
is that correct?

A No, they gave me -- to the person who paid my
bail, they gave the paper saying when it was I had to
appear, but the person lost the paper.

Q Was that paper in English and Spanish?

A I have no idea because I didn't see the paper.

Q Did you ever go back to the court and ask them when you should appear?

A No.
(394R)

Q Before Christmas of 1974, were you living with Lina Gotes at any times?

MR. DAVIS: Your Honor, I object.

THE COURT: Sustained.

Q You testified, did you not, that your Miss Gotes' fiance, did you not?

A Yes.

Q When you went to visit her in jail, you advised the prison authorities that you were her fiance, is that correct?

A Yes.

Q And you were permitted to have contact visits with her in Westchester Jail, is that correct?

A Contact in what sense?

Q When you visited her in Westchester Jail, were you first only permitted to talk to her through a telephone?

A Yes.

Q And then did she tell you she would call the United States Attorney and see if you could see her in

(395R)

person?

A Yes, but it happens that at that time when she was going to ask for the permission, contact visits were given to all of the prisoners.

Q Mr. Gajardo, how long have you been in the United States?

A Now at the present time?

Q Yes.

A I have been here a year and seven months.

Q Did you come here through a visa?

A No.

Q Did you come here illegally?

A Yes.

Q And did Lina tell you that if you testified in federal court, the United States government would help you with your citizenship?

A No.

Q Did you come to this country with a passport?

A No.

Q Did you ever ask the United States government or has the United States government ever offered to help you with any problems with Immigration?

A No.

(399R)

Q That's not your real name, is it?

A No.

Q When you gave the Court that name, did you do so under oath?

A No, because that name was taken from me by the security when I was arrested.

Q In other words, you were carrying with you false identification, is that correct?

THE COURT: Mr. Stone -- gentlemen, do not hand notes to counsel while he is questioning the witness. At the end of his questioning, you can confer with him.

A No.

Q Did they ask you what your name was?

A Yes.

Q Did you tell them it was Luis Rios?

MR. DAVIS: That has been answered, your Honor.

A Yes.

(404R)

Q And you went to deliver it on three occasions during those two days, is that correct?

A During the first day I went twice and then I went the next day when the young girl took care of me.

Q Did you ever read that letter?

A No, because it was sealed.

Q Did you ever ask Lina what was in the letter?

A No.

(408R)

Q Did the agent ever ask you to put a recording device on your body?

A No.

Q Did the agent ever ask you to ask Mr. Marquez any questions?

MR. DAVIS: Your Honor, I already said he didn't talk to the agent before the meeting so these questions are silly.

THE COURT: I will allow this but no more.

A No.

Q Did you talk to the agent before the meeting?

A By telephone only in order to give him the description, my description and that of the car in which I was going.

Q When you talked to him on the telephone, did he tell you what questions, if any, to ask Mr. Marquez?
(409R)

A No, because he didn't speak of anything like that.

Q After the meeting you met this agent, is that correct?

A Yes.

Q Did he ask you at that time what Mr. Marquez said to you?

A No.

Q Did you tell the agent at that time that Mr. Marquez offered you some cocaine?

A I don't remember whether I told him.

Q Did you ever write out a statement of what you said and what Mr. Marquez said on that day?

A No.

Q Did you ever tell Lina what Mr. Marquez said that day?

A Yes.

Q When was that?

A It's been two or three weeks.

Q Two or three weeks after the meeting?

A No. A week after the meeting.
(414R)

Q When you went back to the federal agents that day, you didn't feel that there was any danger to you, was there?

A No.

Q And Mr. Marquez didn't threaten you or show you a gun or a pistol, did he?

MR. DAVIS: I think that was asked and answered before the lunch break, your Honor.

THE COURT: All right.

A No.

S A V E R I O J. W E I D L, called as a witness by the Government, being first duly sworn, was examined and testified as follows:

(2R)

MR. DAVIS: Your Honor, since we are not before the jury I will lead Mr. Weidl through his introductory identification.

DIRECT EXAMINATION BY MR. DAVIS:

Q Is it not true you are a special agent for the Drug Enforcement Administration?

A Yes.

Q You are currently assigned to the New York Drug Enforcement Task Force?

A Yes.

Q Would it be fair to say you are the principal investigating officer with respect to this case?

A Yes.
(426R)

Q Can you remember how you passed the photographs to Mr. Nieves?

A I just gave him the four photographs.

Q Do you remember which one was on the top?

A I don't remember which one was on the top.

THE COURT: They were on top of each other, not spread out?

THE WITNESS: No, they were on top of each other.

Q Do you remember one of the photographs in there as being of Lionel Marquez?

A Yes.

Q Do you happen to remember if the photograph of Lionel Marquez was on the top when you gave the group of them to Mr. Nieves?

A No, it was not.

(433R)

R O B E R T N I E V E S, called as a witness, being first duly sworn, testified as follows:

MR. DAVIS: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION BY MR. DAVIS:

(440)

Q Did you ever talk to Claudio?

A Yes, I did, on the telephone.

Q Did he give you a description?

A Of himself?

Q Yes.

A Well, I already had it.

(450R)

Q What happened?

A I observed Mr. Gajardo eating dinner in the rear of the restaurant with Lionel Marquez and with two females.

(454R)

Q And what happened?

A I returned to my government car and myself and Agent Cunniff ate and continued to watch the front of The Old Coin Restaurant.

At about shortly before 1:00 o'clock, I guess it might have been about 12:50 a.m. the following morning, I observed Mr. Gajardo --

THE COURT: By which you mean a couple hours later, is that right?

THE WITNESS: No, your Honor, you are right. This is about an hour and fifteen minutes later, an hour and forty-five minutes. I observed Mr. Gajardo, Mr. Marquez and the two females exit the restaurant. They started to talk in front of the restaurant for the next few moments and then Mr. Gajardo left their company, crossed the street, got back into his car and left the area, at which time I followed him to another location and had a conversation with him.

After that conversation I returned to the vicinity of East 52nd Street and Second Avenue and assumed a position where I could assist in the observation of Mimi's Bar which is located in that vicinity.

About 1:10 a.m. that same morning I discontinued surveillance along with my co-workers.

CROSS EXAMINATION BY MR. STONE:
(470R)

Q When you met with Mr. Gajardo afterwards, did you have any conversation with him?

A Absolutely.

Q What did he tell you?

A He told me that he was in no immediate danger. That he had had a conversation with Chile Marquez and that Chile Marquez was presently in the bar a few doors down from the restaurant where they had dined and that was basically the conversation.

Q If you thought that Mr. Marquez had cocaine on his person, would you have effected an arrest?

MR. DAVIS: Objection, your Honor.

THE COURT: Sustained.

Q It is your duty, is it not, to arrest suspects who are selling or transporting cocaine?

THE COURT: Sustained. Under some circumstances it may be his duty, but the objection is sustained.

Q Did Mr. Gajardo mention the word cocaine to you in your conversation at that night?

A I don't recall him using it.

RE-DIRECT BY MR. DAVIS:
(473R)

Q How long do you estimate it would have taken you to have gotten authorization to use a Kel device and to actually get the Kel device up to that restaurant?

A I wouldn't have been able to get it. It would have taken several hours at a bar minimum.

MR. DAVIS: No further questions, your Honor.

THE COURT: Thank you very much.

(Witness excused)

MR. DAVIS: At this point the government rests.

THE COURT: All right, ladies and gentlemen, if you will stay in the jury box, I will see counsel in the robing room for a moment rather than send you out and make you come back again.

(In the robing room)

THE COURT: In connection with your

proposed questioning of Mr. Weidl and other witnesses, I would like to get it as clear as possible before they testify as to what my view is as to your rights in regard to going into material relating to the prior trial of Mr. Marquez.

What in particular would you like to ask Mr. Weidl that relates to that subject?

MR. STONE: I'm going to ask him when he first met Sergio and his wife Eliana. When he first got statements from them. When he first gave those statements to the Assistant United States Attorney. Did he participate in a previous trial and testified against Mr. Marquez.

MR. DAVIS: I object to that.

THE COURT: I will sustain it -- well, I think you can ask whether he testified against him.

MR. STONE: Did he have a statement from Lina Gotes when he testified in the prior trial.

Then the next question or someplace in that order I will ask him whether Lina told him about a phone conversation in her cleaners and did he testify about that phone conversation and did he know that she told him it was Freddy and did he testify at the prior trial that that was Marquez after he talked to Lina.

THE COURT: You are calling him as your own witness and you are trying to impeach him by that.

MR. STONE: I'm going to ask him what he testified to.

THE COURT: It is relevant to nothing here.
(475R)
You are trying to show the man lied on a previous occasion. You are calling a government witness, who has not been called as a government witness in this case --

MR. STONE: I think it was deliberate.

THE COURT: They have a right to.

MR. STONE: I have a right to show motive.
Motive to fabricate a case against Marquez.

MR. DAVIS: You have had all your chance you wanted to to ask the witnesses against Marquez if they ever fabricated.

MR. COHN: Your Honor, maybe I will clarify it a little.

Suppose the allegation was slightly different, it was a selective prosecution. Would they not be able to ask him those questions?

THE COURT: I do not see how you can ask the agent that. After all, the agent wasn't the person who decided whether there would be any prosecution here or

not. It was a United States Attorney and the grand jury.

If he came in and lied fifty times and they decided to proceed --

MR. DAVIS: Of course he didn't.

THE COURT: They have a right to proceed.

zb-1

United States of America

vs.

75 Cr. 715

Lionel Marquez and
Sergio Peralta Oyanedel

New York, New York.
October 24, 1975 - 9:55 A.M.

(Trial resumed.)

(In the robing room.)

THE COURT: The purpose of this meeting with counsel in the robing room and with Mr. Littlefield, the Assistant United States Attorney, is to determine what Mr. Littlefield's testimony might be with regard to certain questions that Mr. Stone wishes to put to him as the witness and then to enable the Court to determine whether that testimony would be admissible and whether Mr. Littlefield should or should not be called as a witness.

MR. STONE: The first question is did you meet Lina Gotes on or about July of '74?

MR. LITTLEFIELD: I know she was arrested on or about July 1st, because I was out of the country at that time. And I know that I met her some time thereafter. whether it was July or August, I don't know.

MR. STONE: Did you prosecute her in an

102a

1 zb-2

2 indictment 74 number so and so?

3 MR. LITTLEFIELD: Yes.

4 MR. STONE: Was Lionel Marquez also a defendant
5 in that case?

6 MR. LITTLEFIELD: Yes.

7 MR. STONE: Did Mrs. Gotis give you any state-
8 ment concerning Lionel Marquez prior to the trial of that
9 case?

10 MR. LITTLEFIELD: She didn't give me a state-
11 ment but I was aware that she had given Agent Weidl a
12 statement.

13 MR. STONE: Were you in possession of the
14 statement?

15 MR. LITTLEFIELD: Prior to the trial I was in
16 possession of the various pages which Weidl had taken from
17 Lina Gotes, yes.

18 MR. STONE: Prior to that trial, did you
19 obtain immunity for Lina Gotes?

20 MR. LITTLEFIELD: Mr. Davis did.

21 MR. STONE: The United States Government did?

22 MR. LITTLEFIELD: Yes.

23 MR. STONE: Will you explain immunity to us?

24 THE COURT: You don't have to explain it to

25 me.

103a

1 zb-3

2 You mean you would like it to be explained
3 to the jury?

4 MR. STONE: Yes.

5 THE COURT: No problem about that if he testifies.

6 MR. STONE: Did you call her as a witness?

7 MR. LITTLEFIELD: She was not called as a witness
8 by either side.

9 MR. STONE: Did you have statements of Sergio
10 and Eliana Castillo prior to December 1, 1974?

11 MR. LITTLEFIELD: Sergio and not Eliana, I
12 don't believe.

13 MR. STONE: Did you ever talk to Eliana Castillo?

14 MR. LITTLEFIELD: I don't think I have ever
15 seen her.

16 MR. STONE: You talked with Sergio Castillo?

17 MR. LITTLEFIELD: Again it was the agent and the
18 interpreter but I know that he was in the office. I
19 may have passed by during the conversation.

20 MR. STONE: You were aware of his statements
21 before the trial of Lionel Marquez?

22 MR. LITTLEFIELD: Yes, some time during the
23 beginning of the trial. Before the end of the trial.

24 MR. STONE: You didn't call him as a witness?

25 MR. LIONEL: No.

104a

1 zb-4

2 MR. STONE: Did you compare his statement
3 with Lina Gotes' statement?

4 MR. LITTLEFIELD: It is my recollection at this
5 moment, and I have to refresh my recollection by reviewing
6 the statements, but it is my recollection they covered
7 different incidents.

8 Lina Gotes' statement had to do with how she
9 had gotten, how her earlier dealings with Lionel Marquez
10 had begun coming out of something to do with how she --
11 they had all been initiated through Lionel Marquez' wife
12 in jail, and the setting up of the back and charge from
13 Chile.

14 THE COURT: I would like to know what it is you
15 would wish to show. If you want, I will ask Mr. Cohn
16 to leave the room, if you want to. I thought I made this
17 clear 15 times already, I will not allow a replay in this
18 trial of the history of the prosecution and trial strategy
19 of the Government at the previous trial. Even if it
20 were admissible at any time, it certainly is not admissible
21 in this trial. That seems to me the sole line of question-
22 ing so far. If that is what --

23 MR. STONE: I certainly think I should get
24 on the immunity situation of Lina, he talked to Lina
25 and --

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1 zb-5

2 THE COURT: What does that prove?

3 MR. STONE: I will go even further --

4 THE COURT: If you want to put in the record
5 she was granted immunity -- did she testify at the previous
6 trial?

7 MR. DAVIS: No.

8 THE COURT: Why didn't you ask her on cross if
9 she was granted immunity?

10 MR. DAVIS: She didn't know that.

11 THE COURT: If I am persuaded it is relevant,
12 I will be glad to ask the Government to stipulate.

13 MR. STONE: Did you ever ask Lina Gotes to plead
14 guilty?

15 THE COURT: What if he did?

16 MR. LITTLEFIELD: I can't recall.

17 MR. STONE: Did you consult with her before
18 she pleaded guilty?

19 THE COURT: What you are trying to prove is
20 that there was something improper about their decision
21 to prosecute in this case. That is all you can possibly
22 try to prove here. The questions you are asking have
23 nothing to do with that.

24 MR. STONE: I am also interested in using him
25 to impeach Lina Gotes.

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1 zb-6

2 THE COURT: All right, if you can do that.

3 MR. STONE: Her letter, if you can get the
4 letter --

5 THE COURT: Of course, you will be permitted to
6 use Mr. Littlefield for that purpose. You are quite per-
7 mitted to use Mr. Littlefield or anybody else to impeach
8 any of the Government witnesses. If you want to call him
9 for that purpose, okay. But in my opinion, the proper
10 questions weren't asked. When they were, they haven't
11 zeroed in on impeaching her.

12 MR. STONE: She testified she wrote to Mr.
13 Davis referring to Mr. Littlefield.

14 THE COURT: Ask Mr. Littlefield, do you know
15 anything about that letter?

16 MR. LITTLEFIELD: What letter?

17 THE COURT: It is a letter in which she bitterly
18 complained about having been -- is that the one you
19 mean?

20 MR. STONE: Yes.

21 THE COURT: You know, she was unjustly treated,
22 she received a nine-year sentence whereas Elva, who was
23 tried and found guilty, only received two years, and how
24 she hated criminals and hated the Government, she wasn't
25 going to testify.

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zb-7

Do you remember that letter?

MR. LITTLEFIELD: I think I saw that letter.

MR. STONE: Did you advise her to plead guilty?

THE COURT: What if she did?

MR. STONE: It is interesting whether the Government advised her to plead. She claims, your Honor, that the reason that her guilty plea was evasive --

THE COURT: Did you advise her to plead guilty?

MR. LITTLEFIELD: I honestly can't remember whether I did or not. I know why she didn't testify against Lionel Marquez. She specifically told me she wouldn't ever testify against Mr. Marquez because she was terrified of him. She would testify against anybody else but him.

THE COURT: Do you want to ask him that?

MR. STONE: I don't think it is responsive. I think it was slipped in as a curve ball intentionally.

THE COURT: Gentlemen, I have heard nothing that Mr. Littlefield could tell you relating to the prior trial that I think could remotely be admissible in this trial. If you want to call him as a witness for the purpose of trying to impeach her testimony, as you might anyway to impeach a Government witness' testimony, of course, you are entitled to do so.

I will rule on the respective questions as they

108a

1 zb-8

2 are asked.

3 MR. STONE: Did you know that Mrs. Gotes' state-
4 ment in a crucial issue is in conflict with what Agent
5 Weidl was testifying about?

6 THE COURT: I won't allow such a question,
7 naturally, because it assumes that that is necessarily so.
8 If you want to say did you know that she said so and so
9 and he said so and so --

10 MR. LITTLEFIELD: If you are talking about the
11 telephone call that Weidl thought was Marquez' voice,
12 that Lina said was Freddy, or at some point Lina said it
13 was Freddy, I specifically recall advising the Court and
14 you at that time, and I believe it is on the record that
15 Lina said it was Freddy.

16 THE COURT: The Court was Judge Frankel?

17 MR. LITTLEFIELD: Yes.

18 THE COURT: Mr. Stone, we fought this battle
19 all the way through --

20 MR. STONE: I think I should ask him to identify
21 the indictment that Lina Gotes pleaded guilty to and offer
22 the indictment in evidence.

23 THE COURT: For what purpose?

24 MR. STONE: She denies ever being in possession
25 of narcotic drugs. She only says she is an intermediary.

109a

1 zb-9

2 The indictment charges her with two possession
3 counts. He is the one that advised her to plead guilty.
4 I certainly think the indictment should be allowed in
5 evidence.

6 THE COURT: Overruled.

7 MR. DAVIS: What is overruled?

8 THE COURT: Mr. Stone's proposal.

9 Mr. Stone, look, don't go on. I really --

10 MR. STONE: I have a tough position.

11 THE COURT: You do have a tough position, but
12 I can't help it. The tough position is only tough because
13 you are trying to make, get some leverage out of a situation
14 you are not entitled to get leverage out of.

15 MR. STONE: I think I should be entitled to
16 call Mr. Marquez as a witness, only as to motive and
17 not bringing out credibility.

18 THE COURT: All I can say to that, Mr. Stone, is
19 ho, ho, ho.

20 (Discussion off the record.)

21 THE COURT: Mr. Stone has just asked whether
22 he would be allowed to ask Mr. Littlefield whether Mr.
23 Littlefield was happy with the results of Mr. Marquez'
24 prior trial or who the defendants were at that trial,
25 and the Court has ruled no as to both questions although

1 zb-10

2 I will take judicial notice of what Mr. Littlefield's
3 reaction was as to the result of the prior trial.

4 MR. DAVIS: The only question Mr. Stone can ask
5 about is the letters, right?

6 THE COURT: I said he can ask questions that
7 in good professional faith will be believed to impeach
8 Lina's testimony.

9 (In open court; jury present.)

10 THE COURT: Ladies and gentlemen, I think we
11 are going to be able to excuse you this afternoon for the
12 afternoon; not that the case will have been completed, but
13 I think all that we can do today will be completed by
14 that time.

15 I would like counsel to shoot for that objective,
16 even if we have to stay a little bit later than we normally
17 do for lunch.

18 Mr. Stone, are you ready to proceed?

19 MR. STONE: Yes, your Honor, I would like
20 to call Mr. Littlefield to the stand.

21 BANCROFT LITTLEFIELD, Jr., called as
22 a witness by the defense, being first duly sworn,
23 was examined and testified as follows:

24 DIRECT EXAMINATION BY MR. STONE:

25 Q Mr. Littlefield, are you an Assistant United

1 zb-11

Littlefield-direct

2 States Attorney?

3 A Yes.

4 Q Were you the Assistant United States Attorney
5 in charge of the prosecution of 74 Cr. 546?

6 A I am not sure of the number.

7 Q I show you Government Exhibit LG 3532 and ask
8 you if that could refresh your recollection as to the
9 number?

10 A Well, I don't have a specific recollection of
11 the number, but I know what you are talking about.

12 MR. STONE: Would Mr. Davis stipulate that is
13 the correct number?

14 MR. DAVIS: Yes.

15 THE COURT: Mr. Littlefield, having examined the
16 caption, is that the case you believe --

17 THE WITNESS: Yes.

18 Q Is that a case where Lina Gotes and others were
19 defendants?

20 A That is correct.

21 Q Did you meet Lina Gotes some time after her
22 arrest on that indictment in July and August 1974?

23 A Yes, I first saw her and spoke to her some time
24 after her arrest, which was in the beginning of July and
25 I don't remember whether I first saw her in July or August.

112a

1 zb-12

Littlefield-direct

2 Q But within a month or so after that arrest,
3 a month, six weeks, seven weeks?

4 A Yes, that is correct.

5 Q Did she give you or Federal agents a statement
6 at that time?

7 MR. DAVIS: Objection, your Honor.

8 THE COURT: The question was whether she gave
9 a statement.

10 A Yes --

11 THE WITNESS: May I answer, your Honor?

12 THE COURT: Yes.

13 Q Yes or no, if you could.

14 A Yes.

15 Q Did she offer to cooperate with the Federal
16 Government at that time?

17 A She said there were certain things that she would
18 do and certain things she wouldn't do.

19 Q Was there a trial in December 1974 concerning
20 certain defendants in that indictment?

21 A Yes.

22 Q And prior to that trial in December of 1974,
23 had you obtained immunity for Mrs. Gotes, you or your office?

24 MR. DAVIS: Objection, your Honor.

25 THE COURT: Sustained. It is irrelevant.

113a

1
2 Q Did Mrs. Gotes eventually plead guilty to three
3 counts of that indictment?

4 A I know she eventually pleaded guilty. I
5 can't recall whether it was three counts or more counts.

6 Q Did she plead guilty to possessing narcotic
7 drugs?

8 MR. DAVIS: Objection on relevance, your Honor.

9 THE COURT: She stated she did. He said she
10 pleaded guilty. Why are we going further?

11 Q Did you give her any advice prior to her pleading
12 guilty?

13 A Did I give her any advice of what kind?

14 Q Well, did you advise her to plead guilty?

15 A I know the word --

16 Q If you can, answer yes or no.

17 A I can't recall whether I specifically advised
18 her to plead guilty. I know she had an attorney and I
19 know she ended up pleading guilty and I know there were
20 discussions about her cooperation, but whether I specifically
21 advised her to plead guilty or not, I can't recall.

22 Q Did you advise her to cooperate?

23 A Yes.

24 Q And did she cooperate since July?

25 MR. DAVIS: Of '74?

114a

zb-14

Littlefield-direct

1
2 Q Of '74.

3 THE COURT: Do you mean continuously or ever?

4 Q Continuously.

5 A As I said before, she was willing to cooperate
6 in certain respects but there were certain things she was
7 not willing to do in connection with her cooperation at
8 that time.

9 Q Prior to that trial in December 1974, did you
10 have occasion to talk to Sergio Castillo?

11 A During -- either just before or during the
12 trial I did speak to Sergio Castillo, yes.

13 Q Was he called as a witness?

14 MR. DAVIS: Objection, your Honor.

15 THE COURT: Sustained.

16 Q Did you ever promise Lina Gotes any particular
17 sentence as a result of her pleading guilty?

18 A No.

19 Q Did you ever give her any indication of
20 what sentence she would receive?

21 A No. No specific indication as to years of any
22 sort, no.

23 Q Did you tell her you would make any specific
24 recommendation as to the years?

25 A What I do in cases of cooperating defendants

115a

1 zb-15

Littlefield-direct

2 is to tell them that I will advise the Judge of their
3 cooperation.

4 THE COURT: Is that what you told her you would
5 do in her case?

6 THE WITNESS: I can't recall doing anything
7 different. I don't recall any specific conversation
8 with her in which I said anything different than that
9 and as a matter of practice, this is what I tell everybody
10 that I deal with who is cooperating in like situations.

11 Q Did Agent Weidl assist you in that case?

12 A Yes.

13 MR. STONE: I have no further questions.

14 THE COURT: Any questions, Mr. Davis?

15 MR. DAVIS: Does Mr. Cohn have any cross-
16 examination?

17 MR. COHN: No.

18 MR. DAVIS: No cross-examination.

19 THE COURT: Thank you very much.

20 (Witness excused.)

21 MR. STONE: I call Agent Weidl.

22 S A V E R I O W E I D L, called as a witness by the
23 defense, having been first duly sworn, was examined
24 and testified as follows:

zb-20

Weidl-direct

1

2

Q How did you show him those photographs?

3

A I gave him a number of photographs in a pile

4

and showed it to him.

5

Q Which photograph was on the top?

6

A I don't recall.

7

Q Prior to the time that you showed him those photo-

8

graphs, did you give him a physical description of Marquez?

9

A No, sir.

10

THE COURT: Did you give who?

11

MR. STONE: Castillo.

12

Q Did at any time you ever see Mr. Castillo talking

13

with Mrs. Gotes?

14

A Yes, I think so.

15

Q When was that?

16

A I don't recall exactly. Some time in December.

17

Q Of '74?

18

A Yes.

19

Q Were they talking together in the courthouse?

20

A Yes.

21

Q Did you over hear their conversation or was it

22

English and Spanish?

23

A It was in Spanish.

24

Q Did Mr. Castillo identify Mr. Marquez before

25

or after that conversation?

117a